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The Adoption Bill

Bill No 16 of 2000/2001

The Adoption Bill is a Private Member's Bill introduced by Caroline Spelman MP. It is due to have a Second Reading on Friday 30 March 2001. It covers passporting of money from one local authority to another, an appeals system, fast-tracking of babies within the adoption system and record keeping by local authorities.

The Bill applies to England and Wales.

Jo Roll

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1. Background

Current adoption law is based on the *Adoption Act 1976*. It is widely agreed that this law needs reform. The previous Conservative Government made proposals for reform before the last General Election intervened and the present Government has introduced its own Bill for reforming adoption law, which is supported by the Conservative Opposition. The present Government's Bill, the *Adoption and Children Bill*, received its Second Reading on Monday 26 March 2001 and is being committed to a special Select Committee, which has been ordered to report to the House before Tuesday June 12, 2001. General background information, an outline of Government proposals and responses to them are contained in Library Research Paper 01/33.

This Bill, the *Adoption Bill*, is a Private Member's Bill introduced by Caroline Spelman MP, Opposition Spokeswoman on Health, which is due to have a Second Reading on Friday 30 March 2001. It was introduced on the same day that the Prime Minister announced that the Government would be introducing its own Bill this Session. The Government had previously said that it would be introducing a Bill this year but it only became clear in January 2001 during an exchange between William Hague, leader of the Opposition and Tony Blair, the Prime Minister, that the Bill would be published in this Session.¹

The *Adoption Bill* was published on 29 March 2001. Given the short time available, this Paper provides only a brief account of the Bill's contents, drawn largely from Caroline Spelman's briefing, and a brief reference to existing provisions as well as to the Government's proposals.

The Bill covers four main areas:

- Passporting of money from one local authority to another
- Appeals system
- Fast-tracking of babies within the adoption system
- Tracking/Record keeping

2. Passporting of Money

(Clause 1)

Clause 1 would amend the Section of the *Adoption Act 1976* dealing with adoption allowances (57A). It would require Regulations to provide that in cases where a local authority is looking after a child, or making arrangements for a child as part of its adoption service, and that child is then adopted by a person or persons whose place of

¹ See Library Research Paper 01/33

residence is in the area of another local authority, the first authority must, for a period of time after the placement of the child with the adopters, reimburse the second authority the cost of any allowances paid.

It would also provide for Regulations to prescribe the relevant period and for the Secretary of State to consult such organisations or persons he thinks appropriate before determining that period.

Caroline Spelman's briefing says:

With the probable introduction of a national register, the need for passporting the money becomes even more acute if the process of matching children and parents is actually to become more efficient and to take less time. In effect, a disincentive exists as an authority that receives a child from another authority will be liable for all payments connected to it.

Under this Bill, the authority responsible for the child, the one under which the Adoption Plan for the child was made, will have financial responsibility as well.

I would suggest that this occurs for a reasonable period after the Adoption to facilitate the initial (and often expensive process of settling into a family).

Whilst a statutory power exists which enables Local Authorities to do this, it is not a duty and provision varies around the country.

Section 57A of the *Adoption Act 1976* enables the Secretary of State to make regulations for the purpose of enabling adoption agencies to pay allowances to people who have adopted or intend to adopt. The *Adoption Allowance Regulations 1991/2030* have been issued under this provision and provides the existing framework for the payment of adoption allowances. These Regulations enable any adoption agency (whether local authority or an approved society) to pay an adoption allowance subject to the provisions in the Regulations.

The *Children Act 1989 Guidance and Regulations Volume 9, Adoption Issues*, Department of Health 1991, provides guidance on the payment of adoption allowances. It says "*adoption allowances continue to be the exception rather than the norm...they are intended to give agencies sufficient flexibility to respond to individual needs and circumstances within this overall objective*" (paragraph 2.2). The guidance also says that the agency referred to throughout the Regulations is the agency with responsibility as principal for placing the child for adoption, notwithstanding that another agency may be included in the arrangements (paragraph 2.11).

The Government's Bill would place more emphasis on post-adoption support. Clause 3 would require local authorities to provide adoption support services as part of their adoption service. It provides for Regulations to set out services that are to fall within the definition of support services and says that these may include financial support.

The White Paper, *Adoption: A New Approach*, Cm 5017, issued in December 2000 paragraphs 6.32 – 6.36 gives some indication of the Government's intentions with regard to adoption allowances but does not specifically mention cross-local authority placements.

During the Second Reading of the Government Bill, Caroline Spelman raised the issue of passporting money with the child, particularly in connection with the Government's proposed new National Adoption Register for matching children and prospective adopters. She said:

First, local authorities should be under a statutory duty to place approved prospective adopters on the list. The Bill would achieve that. Secondly, there should be a method of passporting money with the child. Without that, a local authority would have little incentive to seek the best match from the national register. It is critical for the money for recruiting adopting parents and for post-adoption support to follow the child from the local authority where the child was in care to the local authority where the adopters live. Without that, one of the old barriers in the system remains firmly in place.²

3. Appeals system

(Clause 2)

Clause 2 provides for an adoptive parent or a prospective adoptive parent to be able to appeal against any decision taken by an adoption agency (in pursuance of its adoption functions) that materially affects his interests or those of a child whom he has adopted or proposes to adopt. It would also provide for the guardian ad litem for a child to make such an appeal on behalf of the child. The appeals would be to the Children's Commissioner for Wales (in Wales) and to the Children's Rights Director of the National Care Standards Commission in England. These bodies would be able to require the adoption agency to produce all relevant records. They would be able to uphold, redetermine or quash the decision being appealed against, and direct the adoption agency concerned to act in accordance with its judgement.

Caroline Spelman's briefing says:

This is an omission in the Bill which the Government itself has acknowledged.

Any appeals at present "go into the system" and are often dealt with by the Director of Social Services from the authority against which the complaint has been made. I believe that there ought to be provision for those who may be concerned about a child to make a complaint on behalf of the child, i.e. a paediatrician who may be seeing a child repeatedly in hospital and has concerns

² HC Deb 26 March 2001 c 718

about abuse or a previous foster carer who has concerns about procedures and the fact that a child has not yet been placed in an adoptive family.

The Children's Commissioner in Wales and the Children's Rights Commissioner in England could be given the power to oversee the whole process of adoption and act as an Ombudsman. They could be given unrestricted access to the child in care to establish at the point of delivery whether proper care is being provided and whether the adoption process is proceeding fast enough.

I would also seek to extend the role of the guardian ad litem. At the moment, the guardian represents the child for a limited period in the Court processes. I believe that the child needs such a representative and would seek to extend this beyond the actual process of adoption for a reasonable period of time. The child might be too young or unfamiliar with the system to articulate complaints and the guardian would act on their behalf.

At the moment adoption legislation does not include an independent appeal system. There is some provision for making representations. For example, under The *Adoption Agencies Regulations SI 1983/1964* Regulation 11, an adoption agency that is turning down a prospective adopter must invite him/her to submit any representations s/he wishes to make within 28 days. Department of Health guidance to local authorities says that this process is not a formal appeals procedure and that the adoption agency is under no obligation to carry out a new assessment.³

Complaints about local authority adoption services may be made under the general complaints procedures that local authorities have to set up under Section 7B of the *Local Government and Social Services Act 1970*⁴ and to the Local Government Ombudsman. Local authorities also have to set up complaints procedure under the *Children Act 1989* for dealing with services under the *Children Act*. Both these complaints procedures are currently being reviewed. The Department of Health issued a consultation document, *Listening to People* in June 1990 and revised procedures are likely to be issued as a result.

The guardian ad litem service is also being reformed and merged with other services for representing children into the new Children and Family Court Advisory Service (CAFCAS), serving England and Wales, which is to be established on 1 April 2001 under the *Criminal Justice and Court Services Act 2000*.

On procedures relating specifically to adoption, the Government's Bill on adoption (clause 9) would establish a new review mechanism, largely by means of Regulations. It would provide for a panel established by the appropriate Minister for reviewing the "relevant determination". The Explanatory Notes to the Bill [Bill 66 – EN] say that it is intended that the Regulations will provide a right to request a referral to this panel where

³ Department of Health Circular LAC (97) 13 paragraphs 16-27.

⁴ Introduced by the *NHS and Community Care Act 1990*.

an adoption agency indicates to an applicant that it is minded to turn down his application for approval as an adopter.

The Government White Paper issued in December (see above) also described the Government's intentions:

6.23 The Government will legislate to revise the review mechanism for assessments, to establish a new independent system. Following the recommendation of the adoption panel, prospective adopters will be told if the agency plans to reject their application to adopt, and will have the right to a fully independent review of their case. An independent body appointed by the Secretary of State will convene a review panel to look at all the evidence again, and make a new recommendation to the agency. The agency, which is the body responsible for the placement, must take account of this new recommendation before making its final decision.

During the Second Reading on the Government's Bill, Caroline Spelman raised the issue of independent review procedures:

Appeals are perhaps the most serious casualty of the haste with which the Bill has been prepared. Clause 9 provides for a review procedure. The explanatory notes--which, incidentally, were not available until six days after the Bill was published--state that

"A person . . . may apply to a panel established by the appropriate Minister"

and that all the detail will be in regulations. My hon. Friend the Member for Buckingham (Mr. Bercow), who has now left the Chamber, pointed out that it is important, given the lack of clarity on this issue in the Bill, that such a provision should be subject to the affirmative resolution procedure. We should like to debate this matter in considerable detail, with a firm assurance from the Minister that he will put the regulations up for consultation before implementation. We feel strongly that there should be a clearly defined, independent complaints procedure.

Currently, complainants complain to the people about whom they are complaining, which is nonsense. The Bill's review procedure seems to consider only a complaint from a prospective adopter, but what about the other side of the equation--the birth family and the child? Without trying to make work unduly and without creating new layers of bureaucracy, why not give the task to the newly established Children's Commissioner for Wales or the children's rights director for England and create a proper ombudsman system for adoption? We have independent watchdogs for health, for electricity, for gas and for water. Why not for children?⁵

⁵ HC Deb 26 March 2001 c 721

During her winding up speech for the Government, Jane Kennedy, Minister in the Lord Chancellor's Department, referred to arguments made during the debate for children at the centre of proceedings to have a voice. She replied that through the Children and Family Court Advisory Service, the government would reform the role of guardians ad litem and the family court welfare service: "*It will provide precisely the voice that children need in the care system.*"⁶

4. Fast-tracking of babies within the adoption system

(Clause 3)

Clause 3 of the *Adoption Bill* would provide for regulations to set time limits for the assessment by adoption agencies of children for adoption and for the possibility of different time limits for children of different ages and in different circumstances.

Caroline Spelman's briefing says:

In recent years, much emphasis has been placed on the more difficult placement of older children. Unfortunately, this has been at the expense of the placing of babies and young children and naturally the authorities involved are concerned that a family would always take a baby if on offer rather than a teenager. However, some children are now growing up in a succession of foster homes without being able to form a permanent relationship with an adoptive family. This is particularly bad because the younger the child is, the easier it will settle into a new family. Equally, if younger children are placed more efficiently, there will be fewer older, and more difficult, children to deal with.

I think a fast track for baby adoptions and young children, where the time limits for deciding whether a baby is suitable for adoption were lower than the time limits for older children, would help to lessen this problem. NB this does not apply to babies who are placed for adoption at birth where there is a six week period for the mother to change her mind.

The Government's Bill does not make provision for time limits for assessments but it has issued draft adoption standards for consultation,⁷ to which Jane Kennedy referred in her winding up speech:

Several hon. Members, especially my hon. Friend the Member for Stockton, South and the right hon. Member for Haltemprice and Howden, asked about fast-tracking adoption procedures for younger children. Our draft national adoption

⁶ HC Deb 26 March 2001 c 772-3

⁷ Department of Health, *Draft National Adoption Standards for England, Scotland and Wales*, issued for consultation, December 2000

standards set challenging targets. They are currently out for consultation, which will end this month. Our objective is that a plan will be drawn up for a child no more than six months after entering care--sooner if appropriate for the child. If adoption is the plan, a decision should be made in six months and a match with parents made in a further six months. Those are the targets on which we are consulting. It is important for younger children that that should happen as soon as possible. We accept the points made on both sides of the Chamber on that matter. We recognise that, for babies and infants, speed is extremely important, which is why the adoption standards propose that adoption panels should meet at 48 hours' notice, if necessary, to take decisions on babies and infants.⁸

5. Tracking/Record Keeping

(Clause 3)

Clause 3 of the *Adoption Bill* would also make provision for Regulations to require adoption agencies to maintain a full set of records for each child who has been or is being provided with services as part of that agency's adoption services.

Caroline Spelman's briefing says:

The aim of his Clause is to improve the quality of information held at a local level by the local authority. Not only will this prevent a child being "lost" in the system, it should improve the quality of the decisions made by all involved in the adoption process as all the relevant case information will be readily available.

This is not a matter referred to in the Government Bill but it was referred to by Jane Kennedy in her winding up speech:

Although it is not a problem for legislation, and it is not covered in the Bill, the Government are taking action to improve record keeping and planning for children. In the next year, we shall develop an integrated children's system, which will bring together planning and record keeping for children in need in the community and those looked after by local authorities. It will provide a single, coherent record of the child's case history until adoption. That will help planning and decision making. I am not talking about a national database; the aim is to improve individual local authorities' information and record keeping. It is a key theme of the quality protects programme.⁹

⁸ HC Deb 26 March 2001 c 773

⁹ HC Deb 26 March 2001 c 772