

Adoption Bill 2020

Consultation Response

14 September 2020 to 23 October 2020



We Asked

The purpose of the consultation was to seek views on a draft Adoption Bill, which will update the Island's adoption legislation and bring it in line with best practice.

The public consultation on the Bill began on 14 September 2020 and ended on 23 October 2020.

You Said

The consultation received a total of 100 responses. Of those responses 96 were via the online consultation hub and a further 4 were received by email.

Of the 96 online responses 96% were from individuals and 4% were from organisations.

We received 4 responses by email with 3 from organisation and one from an individual who wished to remain anonymous.

On the whole the content of the Bill was supportive. Some respondents shared their personal experiences of adoption which we found helpful.

There were some issues raised in relation to a few clauses however, which we have addressed in the response below.

We Did

We are in the process of amending the draft Bill with the aim to introduce the Bill to the branches of Tynwald during the early part of 2021.



The Responses

1. Do you agree that the Adoption Bill should be based on Adoption and Children Act 2002¹ (Act of Parliament - England and Wales)?

Yes	90	94%
No	5	5%
Not Answered	1	1%

Comments received included:

- The existing legislation has faults of its own and replacing 36 year old legislation with 18 year old legislation seems pointless.
- On the basis of what is stated previously in this introduction, if we are relying on this now anyway, it would seem sensible to have our own version and if it has not been working completely well, we can amend those parts which aren't working when formulating or own Act.

Department's response:

- The English and Wales legislation has been considered due to the frequency of adoptions to and from this jurisdiction. This legislation has been updated periodically by various other Acts and it is this updated version that the Department has considered. We have considered it with the appropriate Island amendments.
- The House of Lords considered the Adoption and Children Act 2002 in a post-legislative scrutiny report² and found that overall it was good legislation.

¹ https://www.legislation.gov.uk/ukpga/2002/38/contents

² https://publications.parliament.uk/pa/ld201213/ldselect/ldadopt/127/127.pdf



2. Do you agree that the Department should assess a person's need for adoption support services?

Yes	77	80%
No	19	20%

Comments received included:

- The Department does not assess a person's need for a family where birth and pregnancy is concerned. Adoption is not always a route chosen out of necessity and the more children that can be homed with families that want them, the better.
- Anyone who wishes to adopt should be given access to support to establish if it is right for them and to help them through the process.
- Fundamentally the department needs to decide whether it accepts that adoptive
 parents have the all the rights and obligations of a biological parent. If it does
 then they should be able to access the assistance they require without having
 unnecessary obligatory assessments every ten minutes. Once the child is
 successfully placed they should not be subject to continued state intervention.
- I feel that every child should be offered it regardless.
- Our family has been an adoptive family for over 11 years and suffered serious issues. Yet the response from the Department in the beginning was 'everything's fine, give it time'; to "yes this is difficult, here's some pretend play or art therapy or a course to go on"; to ' oh hell everything's going wrong, it must be the parents, but it's definitely not our fault for failing to understand the issues that adopted children (ALL adopted children) face". Particularly when they reach puberty, usually a number of years after adoption and then the request for help is met by total silence. The assessment of needs, must be totally divorced from the provision and budgeting of those same needs. A separate structure must be in place to assess need, and ensure provision.

Department's response:

- The ability to assess for adoption support services is given statutory footing in the Bill. The assessment process is necessary to ensure that the correct type and level of support is being offered. The intention is not to provide a barrier to obtaining support but to inform demand and requirements.
- Obtaining adoption support is not a mandatory requirement, there will be no continued state intervention unless necessary as a result of care concerns, as



with any child. The adopters will be the child's legal parents, the Department will not seek to interfere in this.

 In relation to the Department's decision regarding the provision of support, clause 13 (6) or (7) will be amended (whichever sub-clause is deemed appropriate by the Drafter) to include that the Department's decision to provide such services must not be based on financial or budgetary restraints. This will mean that the decision to provide services will be based solely on need.

3. Do you agree that the child's welfare should be the paramount consideration of the court and adoption agencies?

Yes	94	98%
No	2	2%

- Yes of course, and I feel that the Department should respect the hard working agencies of the UK Mainland agencies whom are working with Isle of Man residents, as there are only limited agencies placing children on the Isle of Man. This bill should be reflecting positively on children in care across the UK and Islands as a whole and should not primarily focus on the Department and only local children on the Island. The bill should not also focus primarily on the costs to the Department which comes across quite clearly. If a matching panel takes place with a UK Mainland agency and the approved adopters are matched at a panel with a child based on the best possible match and criteria then this should be respected by the Island's Department and there should not be an additional panel with the Island's Department that could potentially revoke this decision. Perhaps actually speaking with families on the Island that have already adopted children from the UK Mainland and get their opinions. They will tell you I'm sure that the adoption process is very challenging as it is and jumping through additional hurdles with added emotional strain would not be beneficial to anyone. This clearly comes down to 'potential' costs with very little facts behind it. The Department were not taking on additional perspective adopters as they stated that there were not enough children in care in comparison to the number of potential adopters. They then recommended trying a UK Agency. And now the Department wishes to move with the times in an incredibly delayed fashion, this could impact negatively on individuals who are already going through the adoption process with UK agencies.
- I still wish to say that the behaviour of advocates in cases of adoption on the island and the false hope which they give their clients whose children are being adopted is very concerning. It looks to me like parents are encouraged to fight adoption until the last minute as many of them are getting legal aid the advocates still get paid



whilst the child languishes in the care system without a hope of being adopted at a young age.

Clearly the answer is yes, so why would this question need to be asked? But equal
consideration needs to be made of the adoptive parents. Nothing can prepare you
for the emotional battles & mental scars I will carry after allowing a stranger into our
home who then can abuse you through no fault of their own due to their own issues.
A real psychological assessment needs to be made of the parents to ensure they can
cope.

Department's response:

- The paramount consideration in any decision made by an adoption agency or court is the child's welfare throughout their life. This reflects the Isle of Man's obligations under the United Nations Convention on the Rights of the Child. Therefore, equal consideration cannot be given to adoptive parents.
- Potential adoptive parents do undertake a thorough assessment process before being approved as prospective adopters.
- In relation to Manx/UK children, the paramountcy principle is enshrined in English and Welsh law, therefore if a child from that jurisdiction is placed here, the same principle applies when making decisions about that child.
- Regarding opposition to adoption in the court, the decision about whether a child is
 to be adopted will be made earlier in the process. This means that the birth parents
 will not have to go through a second set of proceedings after the conclusion of care
 proceedings and recommence litigation.

4. Do you agree with the proposals relating to consent?

Yes	84	88%
No	12	12%

- Unsure about a birth parent being able to pick a person to adoption their child. I
 have concerns this could be abused.
- If the child needs to be adopted the state should arrange this urgently. There should be no 'fast track' to adoption the state should make better decisions quicker and act competently in finding an adoptive home for the child. Whether the parent consents or not should not prevent or delay the necessary intervention of the state



- Why should a parent choose who the child can be adopted by? Especially if the child has been at risk from the parents.
- I do not necessarily agree that birth parents should be able to choose who they want
 to adopt the child. If they cannot look after their child I question their decision
 making and believe it should be up to the social worker to determine what's best for
 that child.

Department's response:

- Consent doesn't mean that the birth parent can choose in every case. Clause 19 (7) states that where an application has been made for care order and the application is pending, the provisions relating to placement of children with parental consent do not apply.
- If those provisions do apply, clause 16 provides safeguards to ensure that every decision made by the court or adoption agency is in the child's best interests, with a number of factors to be considered.

5. Do you agree with the grounds in which to dispense with consent?

Yes	87	91%
No	9	9%

Comments included:

- Why would this be different to the UK, why do you not just keep it the same?
- inability to find a parent is an insufficient and inadequate reason in my view
- Substantial evidence should be provided if a birth parent cannot be found in terms of the steps taken to locate a parent. Similarly substantial evidence should be provided to ensure the appropriate decisions is being made. The 'Nothing else will do' principle.
- If it is deemed that the parent or guardian lacks capacity, we would first require a mental capacity act of some form...
- I believe that there should be a further reason to dispense with parents' consent as the current proposals do not go far enough.

I believe that there should be an option for a court to dispense of consent where it is reasonably believed that the parent is acting in an unreasonable manner in not giving their consent. This should be a test of a reasonable person to determine if the



parent is being unreasonable. This would prevent the parent deliberately delaying processes by challenging decisions where this is obviously not helpful for the child.

Department's response:

- The provisions in relation to dispensing with consent mirror those in the Adoption and Children Act 2002.
- If a birth parent cannot be found, the position remains the same as it is now, the court will require evidence in order to make a decision regarding dispensing with consent.
- In relation to capacity and the ability to make a decision, reference is currently made
 to the Mental Health Act 1998 however the Department is in the process of providing
 for a Capacity Bill. Once Capacity Bill is in operation, the reference will be changed.
- As to unreasonableness, the court will decide whether to dispense with consent when making placement order if the welfare of the child requires the consent to be dispensed with (clause 21 (5))

6. Do you agree with the proposals in relation to placement orders?

Yes	88	92 %
No	7	7%
Not Answered	1	1%

- I can see the benefit of placement orders with regard to time saved in the process
 where it appears clear that placement for adoption is the most likely outcome.
 However my concern is that for parents I can see that this would feel like decisions
 have already been made and their children already lost before proceedings have
 ended.
- Based on what is in this survey it seems that the Department could use placement orders to end any work being done under a care order to resolve and reunite families. Whilst children must be protected, the first call must be to try and keep them with their family be that birth parent(s) or their extended family.
- I do not agree a Placement Order should be made before a Care Order is in place as this violates the child's and the parents' right to family life.
- Whilst every protection needs to be in place to avoid abuse, this appears to be
 obfuscating the process, making it harder to understand and therefore easier to
 derail. Ultimately prospective adopters will be put-off and the children will suffer.



Department's response:

- Placement orders change the adoption process as the decision in relation to whether
 a child should be placed for adoption is taken earlier in the proceedings. If it is
 apparent that reunification with the birth family is not possible, the adoption process
 can begin. All efforts will be made to keep the child with the birth family but there
 are instances where this isn't possible and adoption is in the best interests of the
 child.
- Placement order proceedings will be concurrent with care order proceedings. As in the UK, if there is a care order application then placement order proceedings could be heard immediately after the care proceedings. We will be amending the definition of 'court' at clause 127 to include the summary court so proceedings can be heard concurrently where possible.
- Placement Orders are well established in England and Wales, there is a lot of UK guidance available to aid understanding as our provisions will mirror this jurisdiction.

7. Do you agree that a Manx adoption panel should review decisions made by UK adoption panels before a child can be placed for adoption on the Island?

Yes	54	56%
No	41	43%
Not Answered	1	1%

- There are lengthy/ rigorous process in place before potential adopters and children can be matched. Having another layer is a waste of time, resource and money. If you are proposing on following UK/Wales then surely you are saying their process is acceptable.
- The agency that is handling the adoptive child's case is best placed to make a judgement on the suitability of the placement. The cost of additional ongoing support should not be a consideration for a Manx panel, you wouldn't apply this to a Manx resident who got pregnant or had IVF treatment in the UK just in case that pregnancy resulted in additional care needs for the baby once born; adoption should be no different. Putting the welfare of the child at the heart of the decision is best done by the agency that has dealt with them, not by a panel of 'Manx' court who only learn the details through a process to 'approve'. I think this is a ridiculous suggestion.



- This is an overly aggressive approach and one which has significant likelihood of negative contribution to an already stressful and difficult process for all concerned within an adoption case. Greater on-island support and training for adopters is much needed and has been severely lacking in recent years. This, coupled with building more confidence locally in relation to the on-island adoption process, would help to reduce the desire to look elsewhere.
- This is inconsistent with the bill's aim to reduce the amount of time taken for an adoption to take place. It adds an extra step for adoptive parents, and could be heart breaking given that this would be at the end of the process & after approval has already been given from the agency. If the UK agency has deemed the placement suitable, what reasonable grounds would an IOM panel have to reject? It seems unnecessary and simply an additional layer of bureaucracy in an already complex and lengthy process. I note you've also provided no real data on how many adoptions have broken down, and on what grounds so your claims that "many" placements have broken down is unquantified.

Department's response:

- This question perhaps wasn't explained very well and elicited a number of opposing responses. We do not want to 'review' the decision as such but establish a link with the placing adoption agency to ensure that adoption support is in place for the child where required.
- The intention isn't to delay adoptions, prevent them from happening or cause additional stress to what is already an emotive process. It is to ensure that the child, who may already have suffered a degree of trauma or have experience of multiple placements, will have their needs met on the island with appropriate support. The aim is to provide support to enable better outcomes for children.
- Regrettably there have been a number of adoption breakdowns over the years. Since 2017, 4 placements of children from the UK have unfortunately broken down.
- We are currently unaware of children being placed on the Island by adoption agencies, we only find out when support is required, usually some years after placement. We are unaware of the background to the adoption, the level of support or the need required.
- We want to ensure the success of placements and one way in which to achieve this
 is for a panel to review the support that has been considered by the placing agency
 and to establish a link with the Island.



8. Do you agree with the proposals for post-adoption contact?

Yes	75	78%
No	21	22%

Comments included:

I believe we need a clearer and more precise definition of, "indirect contact" and,
"face to face" contact. Because currently I'm unaware what category video calls fall
into!? Also, what about by-proxy? (For example, asking someone to pass a message
on)

I think without a precise definition this is a large grey area that would cause concern. Perhaps being used as a loop-hope for a biological parent that has not been granted permission to contact.

- What penalties are there for breaching the non-compliance with the order and how are you going to deal with accident contact.
- Post adoption contact orders should also consider a face to face component where safe to do so in the best interests of the child / children.

A child / children should be supported where possible to have direct contact with siblings, birth family members and wider family in order to support awareness of heritage and longer term to support meaningful connections to birth family members.

- I think some adoptions could take into account that other family members would like
 to have direct contact. Thus is especially important in a small community such as
 ours ... where contact is hard to avoid.
- Restricting such contact only to indirect contact was considered to appear overly restrictive. The Courts have always noted that post adoption contact is an exception [see In the matter of an Application to Adopt a Child (dispensing with consent)/ 1st July 2016/ Civil Division Family Business where in the judgment of Deemster Corlett at paragraph 25 His Honour stated contact was rare but for often necessary for the child for heritage purposes.] It was unclear as to the reasoning behind why limiting such contact to purely indirect contact in any given circumstances is justified. Furthermore, as drafted, the provision appears to fail to allow the court to order who an adopted child must not have contact with either direct or indirect. This may be useful where there is a particularly manipulative natural parent. It was therefore



suggested that reverting back to the wording in section 51A of the 2002 Act would be a better solution. (Judicial comment/IOM Court response).

Department's response:

- Post-adoption contact is a difficult subject. We have a different provision to the UK in only allowing indirect contact. This is to take into account the fact that we are a small jurisdiction.
- We are proposing that any contact should be indirect only. This does not include video, telephone or social media contact.
- Indirect contact will take the form of a letterbox service which will enable birth
 parents (and other relatives) to maintain a link to their child and prepare for the
 possibility of direct contact once the child reaches 18. It will also help the child form
 a picture of their family background and identity.
- If there is a case for direct contact (for example, between siblings if they haven't been placed together) this will be a matter for the parties involved. We are not legislating for direct contact. We have legislated for the minimum requirement. The adopters will be the child's legal parents and therefore, their views will determine whether direct contact is appropriate.

This clause will be clarified in the final version of the Bill.

9. Do you agree with the proposals in relation to the disclosure of information in Part 7?

Yes	86	90%
No	8	8%
Not Answered	2	2%

- It is important that any potential adopter knows the full background and related issues or traumas experienced, of the child being adopted, to facilitate the best likelihood of success in that adopters would be more prepared.
- Health information should be transferred to the adopted child's records (anonymised)
 there are so many conditions which have a genetic predisposition. So many times
 when asked 'Is there any family history of this?' I have had to respond that i was
 adopted so the family history starts with me.
- Adoptive parents need to have informed adequate preparation to know what they are taking on.



Department's response:

- The clauses in the Bill in relation to the disclosure of information bring us in line with the provisions in England and Wales. We want to ensure that information is handled sensitively and securely and so the application for information will be via the adoption agency, as agencies are best placed to provide or advise about any counselling or support.
- Health information will be transferred at the point of adoption (this has always been the case).

10. Do you agree with the ability to review certain decisions made within the adoption process?

Yes	88	92%
No	7	7%
Not Answered	1	1%

Comments included:

- I would be very concerned that potential adopters having been refused could be reviewed. (I think I have interpreted this correctly, it isn't overly clear). There should be no doubt whatsoever about a person/couples suitability to adopt a child.
- Is the Manx Adoption Panel separate to the sole adoption agency (family placement services)? Do they sit under the same leadership? If so, would this decision making be impartial?
- However foster carers do not have protection to protest against a panel decision. It would need to be a quick fair process.

Department's response:

 This provision enables a review procedure to be established for qualifying determinations. Regulations will need to be made to state what a qualifying determination is. One example we gave in the consultation was the decision made by a panel not to approve prospective adopters. Panel members will be suitably qualified so as to consider each case. This ensures that decisions are made fairly and consistently.

11. Do you think an Adoption Contact Register is a good idea for the Island?

Yes	89	93%
No	6	6%
Not Answered	1	1%



Comments included:

- Only if this is optional and not automatically done.
- this is a great idea as often grandparents, for example, often feel punished though they may have done nothing wrong, but are deprived of contact with their grandchildren.
- No mention is given to how old an adopted person must first be before being allowed to register themselves. Or if they are also able to register earlier with the consent of a guardian or adoptive parent.
- But this should link into uk registration.

Department's response:

- The Adoption Contact Register will be optional and the person adding themselves to
 it must be 18 years old or above. This will make it easier to find birth relatives if
 appropriate. Information can also still be obtained via the adoption agency where
 appropriate however this mechanism will make it easier in the event that both
 parties have expressed a wish for contact.
- As to linking in to the UK, the Register here will be in relation to Island adoptions and Adoption Orders made here. The UK has its own Adoption Contact Register

12.Do you agree that step-parents should be granted parental responsibility for a spouse's child?

Yes	86	90%
No	9	9%
Not Answered	1	1%

- If agreed by all parties
- I think step-parents could be granted parental responsibility for a spouse's child but only with consent from the persons already holding the parental responsibility. I also think that if relationships break down, the granted parental responsibility to the stepparent should be considered void.



- Provided the step parent is 100% suitable and thoroughly checked as per adoptive parent process.
- I do not think they should automatically be granted parental responsibility, there should be an option to obtain PR without the requirement to adopt though.
- Providing the necessary checks are carried out and that where reasonably appropriate all parties have been involved, birth parents, the stepparent, and the child, if age-appropriate, in the decision-making process.

Department's response:

- The granting of parental responsibility to a step-parent is a way in which a spouse's
 partner can obtain all of the rights and responsibilities of a birth parent without
 having to legally adopt. For this to happen, the birth parents would need to be in
 agreement (via a signed agreement) or, the person requesting parental responsibility
 would need to apply to court. The court would then determine whether it should be
 granted.
- The agreement to grant parental responsibility may be brought to an end on the application of any person with parental responsibility for the child or by the child themselves, with leave of the court.
- The suitability of a step-parent would not be considered unless there were circumstances in which the welfare of the child was in question.

13. Do you agree that residence orders should extend to the age of 18?

Yes	89	93%
No	6	6%
Not Answered	1	1%

Comments included:

- Children are individuals and mature at different paces, this new provision would accommodate that.
- I think perhaps even longer. If a child goes to Uni they need continued supportthey may study here or come back in the holidays and massive upheaval could have a significant negative impact.

Department's response:

 The age of majority is 18 years old therefore the extension of residence orders to age 18 is appropriate. The aim is to provide additional security and stability for the child.



• If there is requirement for financial support in terms of further education, an adopted child would be treated in the same way as a natural child would be treated.

14. Do you agree that a duty should be placed on adoption agencies to consider placement of a child with foster carers who have also been approved as prospective adopters?

Yes	93	97%
No	3	3%

Comments included:

- Most definitely as this has not been the case in the very recent past.
- Yes, to consider but it must always be that any decision is taken in the best interests
 of the child.
- Foster to adopt is very painful for the adults in the process but great for children so
 the right support needs to be offered. It could work very well on an island and works
 best when there are timely court decisions.
- Strongly.
- The Department has treated foster carers who have wished to adopt the children in their care appallingly in the past. If a child is attached to its carers and well settled in a family then it is only in their best interest to support this.

Department's response:

- Every decision made by a court or adoption agency will considered in light of clause 16 which includes consideration of the welfare of the child throughout the whole of their life.
- Reducing delay in the adoption process is one of the aims of the Bill, the approval of foster carers as prospective adopters will enable this to happen in some circumstances.

15. Please let us know if you have any comments about any other part of the Bill.

I believe court timings need to be looked at.
 We adopted via a UK agency, they came to our home on island within 48 hours. IOM agency took 3 months.



The IOM agency confirmed a child could be placed with us but not legally ours for four years because of our courts.

We adopted our children within the UK court system within 5 months.

- The consultation is poor. Each section provides significant amounts of information, most of which a normal resident would struggle to understand, followed by a simple question worded in a way that it would be difficult to disagree with the question asked. Previous consultations have provided much more clarity and gave the impression that the Department wished to seek informed and genuine feedback.
- The current legislation and process are out of date and out of pace with best practice and hence proposed changes are long overdue and I pray that the changes will gather momentum.

As an approved adopter currently in the family finding stage, I would be more than happy to participate in any future focus groups.

- I'm pleased to see it's finally making its way through to reform, however I'm very concerned about the human rights of Manx residents being effectively stopped from adopting children from the UK.
- The process of adopting can be lengthy this needs to be done in a more timely manner for the sake of the child
- The request that you only comment if you disagree is highly prejudicial to open and honest dialogue. Please do not do it again.

The only reason for commenting on this Bill is the complete desire for other families not to have to go through what we have gone through.

I do not believe that the preparation of potential adopters comes close to the reality. The psychological and emotional cost of the adopted children, adoptive parents and birth families cannot be underestimated, yet the Bill makes scant reference to this.

I also would condemn the support offered to us for the issues that all adoption children face. It is only by our determination and commitment to helping our children that adoptive families survive. But a greater number would be able to lead successful lives with comprehensive and easily accessible support. But this costs money, and the current short sightedness and 'short termness' of the Department have led to a crisis of disruption (I know of 4 adoptive families who have all experienced disruption of some form - causing untold damage to the children but also the families and siblings).

Department response:



- The delay in the adoption process will be reduced to some degree, by the introduction of Placement Orders. Other mechanisms such as foster carer adoption and advance consent will also do this. Delay however is often due to the care proceedings which are dealt with under the Children and Young Persons Act 2001. This Act is on the Department's legislative programme to be reviewed in 2021/2022.
- As to the consultation itself, there is a fine line between providing too much information and too little information. Legislation is quite often complex and difficult to read. The aim is to strike a balance in the consultation questions to enable an informed response.
- Adoption support is being placed in statute for the first time in this Bill as we recognise that support services are crucial and that the right support needs to be in place for all parties. This includes ensuring that provision has been properly considered by UK adoption agencies.

Stakeholders

A number of stakeholders were contacted directly in relation to their views on the Bill, a selection of their comments included:

- It was considered particularly beneficial that the introduction of the concept of placement for adoption occurs at the earlier stage such that the question of dispensing with parental consent is decoupled from the court's decision about adoption.
- Giving step-parents the power to apply for parental responsibility (clause 114) was considered a favourable proposal in particular.
- Restricting [post-adoption] contact only to indirect contact was considered to appear overly restrictive.
- Robust controls will be required to be put in place in setting up the Adoption Contact
 Register and the associated processes and procedures bearing in mind the sensitivity
 of the material that will be held.
- The problem with [adoption support] is that the Department is the paymaster (presumably from their budget) and the assessor. I would have far rather seen the Adoption Services as an independent body.
- Child's welfare I am pleased to see that (in line with the 2002 Act) this is expressed to be throughout the child's lifetime.

Conclusion



Overall, the Bill has been received well, with the majority of proposals receiving support. We were also pleased to note that the professionals, Government Departments and organisations who responded were broadly in favour of the Bill.

We recognise that the question in relation to a Manx panel reviewing decisions by adoption agencies has caused some apprehension and we hope that the response above dispels any concerns in relation to this.

We have considered each response submitted however for the purposes of this Consultation Response, we cannot include each comment. If you have responded to the consultation and feel that your comment or concern has not been addressed, please contact us in the following way:

Email: <u>dhscconsultation@gov.im</u>

Telephone: 642608

Address: Crookall House, Demesne Road, Douglas, Isle of Man, IM1 3QA

Next steps

The Bill will now be prepared for introduction into the Legislative Branches.