

# **Adoption and Children (Northern Ireland) Bill**

## **A Consultation Document**

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# The Adoption and Children (Northern Ireland) Bill Consultation

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## **Ministerial Foreword**

Our adoption legislation in the north of Ireland is almost 30 years old. The key body of children's legislation is more than 20 years old. In taking forward this Bill, my aim is to modernise the legislation for the benefit of children, their parents and those families who offer them loving, permanent homes through adoption.

By way of this Bill, our key aim is to enhance the existing legal framework for adoption to make it more consistent with the principles and provisions of the Children (Northern Ireland) Order 1995 and international human rights requirements. The Children Order is the principal statute governing the care, upbringing and protection of children in the north of Ireland and deals with both public and private law matters which fall within the remit of my Department and the Department of Finance. The provisions in the Bill will extend and strengthen provision in the Children Order to enhance the services provided to children, their parents and carers and improve outcomes for looked after children.

Whilst current adoption legislation has been subject to legal challenges in recent years it is important to recognise that current adoption and children's legislation still provide the necessary safeguards to protect the vulnerable children and young people in our care. However the law, as it relates to adoption in particular, requires to be updated to introduce new processes for adopters and new ways of working for adoption agencies and the courts. In modernising the legal framework, I will ensure that the welfare of every child remains front and centre and the focus of every decision we make and action we take.

This consultation seeks your views on the detail of the Bill. A consultation draft of the Bill is attached.

The Bill is primarily, but not exclusively, proposals drafted and consulted on by the Department in 2006. I am conscious that adoption in particular has been subject to relatively significant legislative reform in other parts of these Islands in recent years. Your views are also sought on reform which has taken place elsewhere with a view to potentially adopting those reforms in the north of Ireland.

Your views, opinions and suggestions are important and I will be glad to be guided by them to reform the law as it relates to adoption and children more generally for the benefit of some of our most vulnerable children.

**Michelle O'Neill**

**Minister of Health**

# Introduction

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This consultation document sets out the Department's legislative proposals in an Adoption and Children (Northern Ireland) Bill. The intention behind this Bill is to overhaul and modernise the legal framework for adoption that will preserve what works well in our current system but will introduce a range of new measures to give effect to the Department's policy and strategy.

The aim of this consultation is to seek views on the detail of the Bill. The paper also highlights legislative reform relating to adoption and children which has taken place in Scotland, England and Wales over the last decade and seeks views on whether those reforms should be implemented in the north of Ireland.

## **Current Adoption Legislation in the North of Ireland and the Need for Reform**

The current law on adoption in the north of Ireland is the Adoption (Northern Ireland) Order 1987. It is based on English legislation drafted in the early 1970s and therefore reflects practices that are effectively forty years old. It was also developed prior to significant developments that now govern all policy making, such as the UK's ratification of the UN Convention on the Rights of the Child, the Northern Ireland Act 1998 and the incorporation of the European Convention on Human Rights (ECHR) into domestic law. Our adoption system is built on old law and requires modernisation. Wide-scale legislative reform is therefore required to deliver:

- a framework for adoption which is more consistent with the principles and provisions of the Children (NI) Order 1995 (the Children Order) and international human rights requirements;
- reduced drift and delay for young people who are unable to live at home;
- better quality, consistent and efficient services for everyone affected by adoption; and
- greater opportunities for older children to benefit from permanence and stability.

In 2006, the Department published a draft strategy for consultation, *Adopting the Future*, which set out a range of proposals for adoption reform, including the introduction of new adoption legislation. The strategy defined the future role of adoption within the broader framework of services for looked after children.

The Bill is principally (although not exclusively) the outworking of the Department's commitment to legislative reform in adoption as set out in *Adopting the Future* and many of the provisions that were consulted on are contained within the Bill. In the period following the *Adopting the Future* consultation, there has been further change to Children's, Family and Adoption law in Britain and these have been considered in the development of the draft Bill. Some of the most significant and recent of these legislative changes are provided in the Children and Families Act 2014 and include, for example, requiring a local authority looking after a child for whom adoption is an option to consider placing them in a 'Fostering for Adoption' placement if one is available; amending the current restrictions in relation to public inspection or search of the Adoption and Children Act Register; placing new duties on local authorities to provide personal budgets upon request to adopted persons and adoptive parents; and to give prospective adopters and adoptive parents information about their entitlements to support.

By way of this consultation paper we are drawing your attention to those legislative changes, as set out in Annex A and seeking your views on whether some of these changes (further detailed in Chapter 2) should apply in the north of Ireland and, if so, whether the Adoption and Children Bill is the vehicle for applying them.

At the time of publication of this consultation paper, a Care Proceedings pilot is ongoing in the Western and South Eastern Trust areas. Also, a review of the Family and Civil Justice systems is drawing to a close. There is the potential for relevant public law reform emerging from the pilot and review to be taken forward under the Adoption and Children Bill.

# Chapter 1

## The Draft Adoption and Children (Northern Ireland) Bill

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The draft Adoption and Children (Northern Ireland) Bill is attached at Annex B. Draft Explanatory Notes to accompany the Bill are attached at Annex C.

The Bill is drafted in three parts:

**Adoption**

**Amendments to the Children (Northern Ireland) Order 1995**

**Miscellaneous and Supplementary Provisions**

# Chapter 1

## Section 1 – Provisions in the draft Bill that were previously consulted on

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1.1 The policy behind the majority of the provisions in the Bill, as currently drafted, was consulted upon as part of the Adopting the Future consultation. Key features include:

### **Adoption**

- making adoption law more child centred and consistent with the Children Order by providing that the child’s welfare is the paramount consideration in all decisions relating to adoption and creating a “welfare checklist” of considerations for bodies making decisions on adoption;
- introducing a statutory principle that, in general delay is likely to prejudice the child’s welfare, and requiring courts to draw up timetables for resolving adoption cases without delay;
- introducing a new pre-adoption order, a “placement order” (replacing the existing “freeing order”), which will no longer automatically extinguish the legal link between a child and his/her birth parents prior to the making of an adoption order;
- providing for *consent*, rather than *agreement*, to adoptive placement and adoption. The grounds for dispensing with parental consent will be reduced from six grounds to two i.e. where the parent or guardian cannot be found or is incapable of giving consent or where the welfare of the child requires the consent to be dispensed with.

- providing a new right to an assessment of needs for adoption support service for adopted children and adults, adoptive families and birth relatives;
- providing a power to establish an independent review mechanism relating to adoption decision making which will be prescribed in regulations;
- placing a requirement on adoption agencies to give the Department statistical or other general information relating to the performance of their functions relating to adoption;
- making provision in relation to the consideration of contact in adoption. The policy intention is that there should be no presumption of contact. The Bill will, however, impose a duty on the court, when making a placement order or a final adoption order, to consider the arrangements the agency has made or proposes to make in relation to contact and the court may impose any conditions on a contact order made as it considers necessary;
- ensuring children who are, or may be, placed for adoption by adoption agencies are only removed from placements by authorised people and in the appropriate manner. An offence will be committed if a child is withheld and not returned in breach of provisions where consent has been withdrawn or where an application for a placement order has been refused.
- in the case where the applicant is the step-parent of the child, stipulating that the child must have had his home with the prospective adopters for a period of one year before an application can be made;
- stipulating one of three conditions which must be satisfied before an adoption order can be made, where a child has a parent or guardian. These are: that the parent or guardian has consented or that such consent has been dispensed with; the child has been placed for adoption by a north of Ireland adoption agency with prospective adopters with

consent, or no parent or guardian opposes the making of the order; or the child has been placed for adoption under the Adoption and Children Act 2002 (England and Wales) or is the subject of a Scottish permanence order.

- amending the eligibility to apply to adopt criteria to enable one person or a couple (who are married, civil partners or two persons, whether same sex or different sex, living as partners in an enduring family relationship) to apply to adopt.
- The requirement for a natural parent in a step-parent situation to adopt his/her own child will also be removed; undoing the requirement for joint applications to be made in step-parent situations;
- enabling adoption services to be managed and/or provided on either a regional or sub-regional basis;
- introducing a power to make regulations to enable adoption agencies to charge fees for the provision of adoption services, for example, assessment of adopters, adoption support;
- creating a power to make regulations to require adoption agencies, in prescribed circumstances, to provide prescribed information to prospective adopters thus providing for a new and more consistent approach to access to information;
- introducing new provisions on the information that adoption agencies must keep following adoption in relation to a person's adoption, the information that agencies must disclose to adopted adults on request, the information that courts must release to adopted adults on request and the information that adoption agencies may release to adopted adults, birth parents and others;

- providing that adoption agencies will be the gateway for adopted adults to obtain a copy of their original birth certificate and adoption information, and not the Registrar General as is currently the case;
- enhancing the arrangements for intercountry adoption, making provision to strengthen the restrictions on bringing children into the north of Ireland and introducing a power for the Department to charge for the administration of inter-country adoption casework.

### **Amendments to the Children (NI) Order 1995**

- amending Article 9 of the Children Order to reduce the time period a child is required to have lived with a foster carer from three years to one year, before a foster carer is permitted to seek an order under Article 8 of the Children Order.
- providing a power to the court to direct that a Residence Order being made in respect of a Looked After Child is automatically granted to age 18 or extended to age 18 unless a court determines otherwise.
- introducing Special Guardianship Orders, a new legal order intended to provide greater permanence for children for whom adoption is not appropriate.
- inserting a new provision after Article 18(4) of the Children Order to require authorities to ascertain the wishes and feelings of a child in need in relation to suitable services which they are under a duty to provide and to give those wishes and feelings due consideration.
- providing a power to make regulations to require authorities to impose time limits on the making of representations (including any complaint) about services provided under the Children Order. The complaints procedure which already applies to services provided under Part 4 of the

Children Order will also be extended to include certain prescribed services provided under Parts 5 and 6 of that Order.

- providing for advocacy services for looked after children, former looked after children, special guardianship children or adopted children who wish to make representations (including complaints) about the discharge of any of the authority's functions under the relevant part of the Children Order in relation to the child or in connection with adoption.
- providing that applications for the making or revocation of a placement order under the Bill become specified proceedings under Article 60 of the Children Order, with the effect that a Guardian ad Litem will be appointed and the child separately represented in every case (unless the court decides this is unnecessary).

### **Miscellaneous and Supplementary Provisions**

- placing the Regional Adoption Information System on a statutory footing, (The Northern Ireland Adoption and Children Act Register (NIACAR)) with provision for the operation of the Register to be prescribed in regulations, including the retention and disclosure of information.
- enabling prosecution to be pursued up to six years (in place of the current six months) after the commission of an offence in connection with:
  - general power to regulate adoption agencies
  - restrictions on disclosure on protected etc. information
  - offence of breaching restrictions on arranging adoptions etc.
  - restriction on reports
  - prohibition of certain payments
  - disclosure of information: (NIACAR)

This is to allow for cases where offences may not come to light immediately, for example where they are uncovered by an inspection or,

in the case of the private adoption of a baby, until the child is enrolled for primary school education. Proceedings may then be brought within six months of the date the prosecutor had sufficient evidence to warrant bringing the proceedings.

## Chapter 1

### Section 2: Provisions in the draft Bill previously consulted on and different approach being proposed

1.2.1 Further consideration has been given to a number of proposals commented on in Adopting the Future in 2006. As a result, the Department is proposing to take a different approach in a number of areas. These are set out below and the rationale for a change in policy position is provided.

#### Independent Reviewing Officer

1.2.2 Chapter 2 of the Independent Reviewing Officer (IRO) Handbook provides an overview of the IRO role and functions in England and Wales. The Handbook can be accessed at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/273995/iro\\_statutory\\_guidance\\_iros\\_and\\_las\\_march\\_2010\\_tagged.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273995/iro_statutory_guidance_iros_and_las_march_2010_tagged.pdf)

1.2.3 In the Adopting the Future consultation report published in 2007, the Department acknowledged the importance of having an appropriate system of oversight of Trust implementation of care plans to ensure that the UNCRC and human rights of children are properly protected. It also recognised the importance of an impartial and independent system and a review process which is well co-ordinated and implemented properly and consistently across all HSC Trusts.

1.2.4 Since 2009, a number of systems and mechanisms of independent review of HSC services have become well established in the north of Ireland. The Regulation and Quality Improvement Authority (RQIA) has been operating for more than a decade and recently undertook a review of fostering services and, with the introduction of adoption standards in the future, will also undertake reviews of HSC Trust adoption services. RQIA currently has the power to register and inspect independent adoption agencies and, with the

introduction of new Fostering Regulations, will have the power to register and inspect independent fostering agencies. In addition, significant investment has been made in advocacy for children in the care of HSC Trusts which, under the Bill, will be placed on a statutory basis. In addition, the operation of the IRO service in England and Wales has met with some criticism, either because of excessive workloads of officers or siting of the service within local authorities.

- 1.2.5 The Department is seeking views on whether an IRO service should be put in place in the north of Ireland under the Bill. Another option is to not place an IRO service on a statutory basis and instead allow HSC Trusts to retain the flexibility to introduce an IRO role, or elements of such a role, through their own review systems. This would be similar to the system in operation in Scotland.

**Do you consider that an IRO service should be put in place?  
If yes, do you consider that such a service should be introduced  
on a statutory or non statutory basis?**

### **Adoption Support Agencies and Adoption Support Advisers**

- 1.2.6 We previously proposed to establish statutory Adoption Support Agencies and to create a statutory role of Adoption Support Adviser. Introduced by the Adoption and Children Act 2002, the role of the Adoption Support Adviser in England is to provide advice and information to those affected by adoption on the adoption support services that may be suitable and how those services may be made available. They also advise staff in adoption agencies on assessment of needs for adoption support, effective planning for service delivery and in particular, supporting and facilitating inter-agency working when needed.
- 1.2.7 We do not now intend to include within the Bill provision for the establishment of Adoption Support Agencies or Adoption Support Advisers.

In relation to Adoption Support Agencies, the basis for the decision not to establish distinct or dedicated support agencies is two-fold.

1.2.8 Firstly we do not consider that the volume of adoptions in the north of Ireland in any given year is sufficient to justify the establishment of distinctive, dedicated support agencies. Secondly, adoption support services are already well developed and are delivered by adoption agencies, enhanced by provision from a number of voluntary organisations. They include, for example:

- Looked after Children Therapeutic Services in each Trust which have been augmented to offer a service to adopted children and their families;
- Payment of adoption support allowances.

Also the HSC Board and Trusts have focused on providing more robust adoption support services, in partnership with Voluntary Adoption Agencies such as:

- The Regional Independent Birth Family Support and Counselling Service for Adoption – Next Step, delivering a service which provides emotional support to birth parents and families to enable them to have a greater understanding of the adoption process and to enable their feelings and concerns to be acknowledged and taken into account;
- Post-approval support services to adopters which include:-
  - Three year free membership post approval to adopters in the north of Ireland which provides access to support groups, helpline, participation in family days, access to library, publications.
  - Post adoption training for adopters.

The HSC Board also commissioned work to identify the educational needs of adopted children. 'Let's Learn Together: A guide for parents and teachers of adopted children in primary school in Northern Ireland' was published in 2013.

1.2.9 In relation to Adoption Support Advisers, again it is not considered necessary to establish a distinct role, principally on the ground that it will be difficult to justify because of the number of adoptions in the north of Ireland. However, we will ensure that adoption support services involve the supply of advice to those affected by adoption. In other words, we will reflect the role and function of the adoption support adviser without creating a distinct role in statute.

**Please provide your views on whether a distinct Adoption Support Adviser role should be established?**

**Please also provide your reasons.**

### **Adoption Support Services**

1.2.10 The Adoption and Children Bill places a duty on adoption authorities to make arrangements for the provision of adoption support services, as specified in regulations. This duty will be used to deliver a framework for adoption support services (including financial support). It also provides a new right for those persons specified in clause 5 to request and receive an assessment of needs for adoption support services. The assessment links with other health, social care services and education services, where the needs for such services are identified, with the aim of identifying a co-ordinated package of support to help adoptions succeed.

1.2.11 We previously proposed to require adoption authorities to only assess the support needs of those affected by adoption. We did not propose to require the provision of support where it was assessed as needed. This is the position in England and Wales under the Adoption and Children Act 2002.

1.2.12 In Scotland, under the Adoption and Children (Scotland) Act 2007, where a local authority has decided that the provision of adoption support services is required following an assessment of needs, the authority **must** provide the

service in respect of certain people, that is, adopted persons, those who may be adopted, adoptive parents, prospective adopters, and birth families. In all other cases, the authority has discretion to provide the service which has been assessed as needed.

1.2.13 The Department is seeking views on whether we should adopt the England and Wales approach, by creating a duty to assess only, or whether we should adopt the Scottish approach by creating a duty to assess and a duty to provide services assessed as needed. If you consider that the latter approach should be adopted, we would also welcome views on whether such a duty should apply in respect of all individuals or be restricted to particular categories of people.

**Do you consider that the Department should create a duty to provide services assessed as needed?**

**If yes, should such a duty apply in respect of all individuals or be restricted to particular categories of people?**

**Which categories of people should the duty apply to?**

### **Special Guardianship Orders**

1.2.14 We previously proposed to introduce Special Guardianship Orders (SGOs) in line with their introduction in England and Wales under the Adoption & Children Act 2002.

1.2.15 SGOs were intended to provide greater security to children and their carers without totally severing the birth parent(s)' parental responsibility, as in adoption. It was envisaged that SGOs could be used:

- for older children;

- for those looked after children who were in foster care, (non-relative and kinship care) and who had, over time, developed a strong relationship and place in the foster carers' family and there was little likelihood of them returning to their parent(s) and no significant reason why the child should remain in the care of the Local Authority;
- to enable a relative, friend or other person connected with the child to exercise parental responsibility to the exclusion of others; and
- for unaccompanied asylum-seeking children who may need secure permanent homes, but have strong attachments to their families abroad.

1.2.16 As indicated in the Adopting the Future Consultation Report, the Department considers that Special Guardianship offers an excellent option for children who cannot return to their birth families but for whom adoption is not an option. Such orders:

- for previous looked after children, give the Special Guardian clear responsibility for caring for the child and for taking decisions to do with their upbringing. The child would no longer be in the care of a HSC Trust;
- provide a firm foundation on which to build a lifelong permanent relationship between the child and their Special Guardian;
- provide greater legal security while preserving the basic link between the child and their birth family; and
- provide access to a full range of support services including, where appropriate, financial support.

1.2.17 In the main, it is intended to implement SGOs in line with their operation under the Adoption and Children Act 2002 in England and Wales which amended the Children Act 1989. The Bill will similarly amend the Children Order.

1.2.18 We are aware that some issues have arisen with SGOs in England. These include:

- While some of the Special Guardians may be relatives, some children are being placed with strangers ‘to them’ or individuals who they have never lived with before [this was not the policy intention].
- Extended families feeling pressurised into applying for an SGO, either to avoid children being taken into care or being placed for adoption and to allow the Local Authority to terminate its involvement.
- Not enough time being given to consider the lifelong implications of an SGO, financial and otherwise and, in some cases, appropriate support not being sought in case it may be perceived that the special guardian is not coping.

1.2.19 To deal with some of these issues, the Department for Education [London] conducted a review of Special Guardianship during 2015. This included a ‘Call for Evidence’. As a result of this consultation, the Schedule to the Special Guardianship Regulations 2005 (the 2005 Regulations) was amended to add to the list of matters to be dealt with by local authorities in reports they prepare for the court in applications for SGOs. The amendments require that the report:

- deals with any harm which the child has suffered and any risk of future harm to the child posed by their parents, relatives or any other person considered relevant. This might include, for example, a partner of the parent;
- includes an assessment of both the child’s current needs and their likely future needs;
- includes an assessment of the nature of the child’s relationship with the prospective special guardian both at the time of the assessment and in the past; and
- includes an assessment of the parenting capacity of the prospective special guardian.

1.2.20 In consultation, we will consider developing proposals, the aim of which will be to ensure that an SGO best meets the needs of the child/young person for whom the order is being sought.

1.2.21 In addition, the Department considers that, to preserve the original policy intention of offering older children another route to permanence with former carers, provision in the Bill should be strengthened. There are a number of options which the Department considers may address the issues. These options are set out below.

### Residence Requirements

1.2.22 The current provisions could be amended to include additional requirements to ensure SGOs are not made until placements are tried and tested. Additional requirements **could** include one, or a combination of, the following:

- Inserting an overarching condition that no SGO can be made where the child has not lived with the applicant for a specified period.
- Amending new Article 14A(5) to introduce a new category to those who can apply.
- Amending new Article 14A(5)(b) to require that where a residence order is in place, it has to have been in place for at least 1 year before an application for an SGO can be made.
- Amending some/all of the qualifying periods specified in new Article 14A(5) from 1 year to 2 years.
- Introducing Interim SGOs to provide that only an Interim Order can be made until the child has lived with the prospective Special Guardian for a minimum period.

**Do you consider that the introduction of SGOs in the north of Ireland should be strengthened to ensure that children are placed with carers with whom they have a prior relationship, established by living with the carer prior to an SGO being sought?**

**If so, which of the options outlined at paragraph 1.2.22 do you consider should be applied?**

**Are there any other requirements you would like to see in place?**

Panel assessment of Special Guardianship Applications relating to looked after children

1.2.23 A stakeholder group of child care professionals, commissioned by the Department following the Adopting the Future consultation, considered whether a decision to pursue an SGO should be made by a panel similar to an adoption panel. The group concluded that, in cases involving looked after children, an independent panel should scrutinise the child's circumstances and determine if special guardianship is in the child's best interests. The group also concluded that, in order to ensure that an SGO was in the child's best interests and was not being proposed as a substitute for adoption, such applications should be scrutinised by a joint Adoption/Special Guardianship Panel.

1.2.24 We consider that the draft Bill could be amended to include provision requiring Panel consideration of proposed SGO applications involving looked after children. The report prepared for the Court would contain a Trust decision following a recommendation from an appropriately constituted panel on whether an SGO is the appropriate care plan for the looked after child.

**Do you consider that Panel consideration of proposed special guardianship order applications involving looked after children should be established in law?**

**If not, please give your reasons.**

### Special Guardianship Support Services

1.2.25 In England and Wales, requirements for the assessment and provision of Special Guardianship support services are prescribed in Regulations and the draft Bill contains similar powers for the Department to make Regulations governing SGO support services. Current provision at new Article 14F states that, **at the request of** a child with respect to whom an SGO is in force, a special guardian, a parent, or any other person of a prescribed description, an Authority may carry out an assessment of that person's needs for special guardianship support services and must do so in respect of prescribed persons or in prescribed circumstances. In England and Wales, regulation 11 of the Special Guardianship Regulations 2005 provides that a child who is looked after, or was looked after immediately prior to the making of an SGO, the special guardian, prospective special guardian or parent of such a child must receive an assessment at their request.

1.2.26 Provision has been included in the draft Bill to give the Department the power to make regulations governing SGO support services. The aim is to ensure that families caring for children under SGOs are suitably supported. We are proposing to specify in regulations made under the Bill that, for looked after children and their special guardian, it will be a requirement for an Authority to carry out an assessment, regardless of whether those individuals request an assessment. The assessment would then form the basis of a proposed support plan which would be subject to the approval of the SGO Panel as part of its assessment as to whether special guardianship is in the best interest of the child. While the support plan initially may not be

very specific, it would be subject to review and adapted to suit changing needs.

## Care Plans

1.2.27 In the Adopting the Future consultation report published in 2007, the Department proposed a number of measures aimed at tackling unnecessary delay. This included placing the existing system of care planning on a statutory basis by way of inserting a new Article 50A into the Children Order, requiring the preparation and submission of a care plan by a HSC Trust prior to a care order being made by the Court and amending Article 50 of the Children Order to provide that a Court may not make a care order until it has considered the care plan prepared by the Trust. Such amendments would have mirrored the provisions in the Adoption and Children Act 2002 which made similar amendment to Article 31 of the Children Act 1989.

1.2.28 However, the Children and Families Act 2014 subsequently amended the provision in the Children Act to only require the Court to consider the permanence provisions of the care plan. The purpose of this amendment was to focus the court's consideration, when making its decision as to whether to make a care order, on the provisions of the care plan that set out the long-term plan for the upbringing of the child. Specifically, the court is to consider whether the local authority care plan is for the child to live with a parent or any member of or friend of the child's family, or whether the child is to be adopted or placed in other long term care. These are referred to as the 'permanence provisions' of the section 31A plan. The court is not required to consider the remainder of the plan (subject to section 34(11) which requires the court to consider the contact arrangements for the child), although the amendments do not prevent the court from doing so.

1.2.29 The 2014 Act amendments are in keeping with current policy to reduce unnecessary delay in Family Proceedings in the north of Ireland. Consequently, we are proposing to similarly require the Court to consider the permanence provisions of the care plan only (subject to Article 53(11) of the

Children Order which requires the court to consider the contact arrangements for the child). Clause 122 of the Adoption and Children Bill reflects this approach and also includes a definition of 'permanence provisions'.

**Do you agree that the Court should be required to consider the permanence provisions of the care plan only?**

**Do you agree with the definition of 'permanence provisions' included in clause 122?**

**If not, please give your reasons.**

## **Criminal Record Checks**

1.2.30 As part of the 2006 Adopting the Future consultation, the Department proposed to introduce a requirement that all appropriate criminal records checks be conducted on prospective adoptive applicants. In most circumstances, a person will not be regarded as suitable to be an adoptive or foster carer if he has been convicted of or given a caution in respect of certain serious "specified" offences likely to be equivalent to those outlined in the Adoption Agencies Regulations 2005. There were no objections to this proposal and clause 41 of the draft Bill contains the necessary regulation making power.

1.2.31 The *Fresh Start* Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland highlights concerns that the impact of conflict-related convictions remains long after the sentence has been served. As background checks are an increasing requirement in many areas of daily life, individuals face a permanent barrier to moving on, including in attempting to secure employment, applying to foster or adopt a child, etc. The Report found that it is not just the individual who is excluded as a result of their

convictions, but quite often family members who are required to undergo extensive background checks.

1.2.32 Recommendation B2 of the Fresh Start Panel Report recommends that the Review Panel's work should continue to consider what steps can be taken to improve access to financial services (including learning and insurance), **adoption** and travel advice. To give effect to this recommendation, the Adoption and Children Bill contains a specific power, in clause 42 (suitability of adopters), to make regulations which may provide that an adoption agency, in determining the suitability of an individual to adopt, must not take into account offences of a prescribed description. The regulations will not be brought forward until after the Bill receives Royal Assent, at which stage they, and the offences to be prescribed, will be subject to public consultation.

## Chapter 1

### Section 3: Provisions included in the draft Bill which were not previously consulted on

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1.3.1 The draft Bill includes provisions which have not previously been consulted on. These are discussed below.

#### **Accommodation of children in need etc.**

1.3.2 Article 18 of the Children Order places a duty on authorities to safeguard and promote the welfare of children in need in their area by providing suitable services to those children.

1.3.3 Clause 116 of the Bill amends Article 18(6) of the Children Order to provide that the power for authorities to provide services for children in need may include accommodation to a disabled child in accordance with regulations. The provision of such accommodation will be for the purposes of providing short term breaks. The meaning of a short term break will be specified in regulations made by the Department.

1.3.4 Article 25(1) of the Children Order defines a looked after child as a child who is in the care of the authority or who is provided with accommodation by the authority for more than 24 hours. Article 25(2) sets out the meaning of accommodation provided by an authority and excludes accommodation provided under Article 34C or 35B. The amendment at clause 116 will also exclude accommodation provided under Article 18(6).

1.3.5 The purpose of the amendment at Articles 18(6) and 25(2) is to enable a HSC Trust to provide accommodation for respite purposes to a disabled child with the consent of his/her parents without requiring the child to become looked after (taken into care) by the Trust, as is currently the case. Where a disabled child requires to be looked after, for example, for

safeguarding reasons or at the request of the parents or those with parental responsibility, this will continue to be the case.

**Do you agree that a disabled child being provided with accommodation for respite/short break purposes should not become looked after?**

**If you disagree, please give your reasons and outline how you consider such arrangements should be treated.**

### **Removal of the restriction of making cash payments only in exceptional circumstances**

1.3.6 Article 18 of the Children Order (General duty of authority to provide personal social services for children in need, their families and others) provides in subsection (6) that in the exercise of its functions an authority may give assistance, in exceptional circumstances, in the form of cash.

1.3.7 Clause 116 of the Bill amends Article 18(6) to lift the restriction on the making of cash payments in exceptional circumstances only. The intention is to give HSC Trusts greater flexibility to make cash payments to those caring for children in need. We consider that it may better enable HSC Trusts to provide regular and continuing financial support to children in need where this is assessed as being the most appropriate way to safeguard and promote their welfare. This is consistent with the recommendations contained in the Regulation and Quality Improvement Authority's overview report on the Review of Statutory Fostering Services (December 2013) and also BAAF's policy document "Informal kinship carers: A policy to inform practice", which is further explained at paragraph 2.5.

**Do you agree that the restriction on the making of cash payments in exceptional circumstances should be lifted?**

**If not, please provide your reasons.**

### **General duty of authority to promote educational achievement and prevent disruption of education and training**

- 1.3.8 Looked after children in the north of Ireland continue to do less well when compared to their peers in the general school population.
- 1.3.9 Clause 117 of the Bill inserts a new provision at Article 26(1A) of the Children Order (general duty of authority) to create an additional duty on HSC Trusts, as part of the duty to safeguard and promote the welfare of a looked after child, to promote the child's educational achievement. Clause 117 also amends Article 27(8) of the Children Order (accommodation and maintenance for children) to require HSC Trusts, in providing a child with accommodation, to secure, so far as is reasonably practicable and consistent with his welfare, that the child's education or training is not disrupted. The effect will be that Trusts must give particular attention to the educational needs of any child they are looking after, in fulfilment of their corporate parenting responsibilities.

**Do you consider that a HSC Trust should be required to promote a child's educational achievement?**

**Do you consider that, in providing a child with accommodation, a HSC Trust should be required to ensure, so far as is reasonably practicable and consistent with his welfare, that the child's education or training is not disrupted?**

**Are there other measures which could be introduced to support a child's educational achievement?**

### **Contact / No Contact orders**

1.3.10 Section 26 of the Adoption and Children Act 2002 makes provision for applications for contact in respect of children placed for adoption. Once an adoption order is made, a section 26 contact order ceases to have effect. Birth relatives and other relatives seeking contact post adoption need the leave of the court to apply for a contact order under section 8 of the Children Act 1989. Key action 6 of 'Adopting the Future' proposed the introduction of similar provisions to those in section 26 of the Adoption and Children Act 2002. Such provision has been included in the Bill at clause 22.

1.3.11 However sections 8 and 9 of the Children and Families Act 2014 further enhance the arrangements for contact. Section 8 amends section 34 of the Children Act 1989 (Parental contact etc. with children in care) to make it clear that the duty on local authorities to allow reasonable contact between a child in care and their birth parents (and guardians and certain others) is subject to the duty on local authorities to safeguard and promote the welfare of looked after children under section 22(3)(a) of the Children Act 1989 (General duty of local authority in relation to children looked after by them).

1.3.12 Where a local authority has been authorised by a court order to refuse contact between a looked after child and a member of the child's birth family (or certain others), or are doing so temporarily (both under section 34) the local authority is no longer under a duty to endeavour to promote contact as required under paragraph 15 of Schedule 2 to the Children Act 1989 (promotion and maintenance of contact between child and family).

1.3.13 These changes are intended to address concerns, confirmed by academic research<sup>1</sup>, that a significant proportion of contact arrangements continue to be made which may expose children to the risk of further harm. Changes are needed to primary legislation to make it absolutely clear that the duty on authorities to 'safeguard and promote the welfare of looked after children' is of fundamental importance when making contact arrangements. The changes should reduce cases of inappropriate and potentially damaging contact arrangements and result in an overall improvement in welfare for children in care.

1.3.14 The Department is of the view that similar amendments should be made to Article 53 of the Children Order. These are given effect by clause 123 of the Bill.

**Do you agree that the duty on a Trust to endeavour to promote contact should not apply where it is assessed that such contact would be contrary to the child's welfare?**

**If not, please explain why.**

1.3.15 Section 9 of the Children and Families Act 2014 inserts new sections 51A (Post Adoption Contact) and 51B (Orders under section 51A:supplementary) into the Adoption and Children Act 2002 which provide for the making of

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<sup>1</sup> 47 Selwyn, J. (2004) Placing older children in new families: changing patterns of contact, in Neil, E. and Howe, D. (eds) Contact in Adoption and Permanent Foster care: Research, theory and practice, London: BAAF; and MacAskill, C. (2002). Safe contact? Children in Permanent Placement and Contact with their Birth Relatives. Dorset: Russell House Publishing

orders which deal with contact arrangements at the adoption order stage and subsequently between an adopted child and those persons listed.

1.3.16 Post adoption, any further contact between a child and their birth parents is a matter exclusively for the adoptive family. Adoptive parents are only obligated to maintain contact where a contact order has been made. Evidence suggests that very few formal contact arrangements are imposed after the adoption order; informal arrangements are more common. In some cases, unsolicited, harmful and disruptive contact can occur between an adopted child and their birth relatives or former guardians. There is currently no effective recourse to the courts for the adoptive family until the disruptive contact actually happens, by which time damage could already have been done. Adoptive parents can decide to refuse contact; going against a contact order, but this may mean that they face proceedings for not complying. We consider that there needs to be a mechanism to deal with contact arrangements between adopted children and their birth family, former guardians and certain others from the point of adoption onwards.

1.3.17 Section 9 of the Children and Families Act 2014:

- replaces the provisions under section 8 of the Children Act 1989 which permit applications for contact at the same time as an adoption order;
- provides for a 'contact order' which will require the adoptive parent to allow the child to visit or stay with the person named in the order, or otherwise have contact with them;
- provides for a 'no contact order' which will prohibit the person named in the order from having contact with the child.

1.3.18 These provisions have been replicated at clauses 49 and 50 of the Bill. The aim is, through the 'no contact order' to enable adoptive parents to get an order to prevent unsolicited, disruptive and harmful contact between birth parents, former guardians or certain others and their adoptive child.

**Do you agree with the provision included in the Bill which introduces the two new post-adoption contact orders outlined?**

**If not, please give your views on what, if any, post-adoption contact arrangements should be introduced?**

### **Appointment of Guardians Ad Litem**

1.3.19 The Northern Ireland Guardian Ad Litem Agency (NIGALA) provides Guardians ad Litem (GaLs) who are appointed by the court to represent children in family law proceedings, including care and adoption proceedings. Article 60 of the Children Order governs the appointment of GaLs by specifying which proceedings they can be appointed for. Under Article 60(7) GaLs are appointed from a panel and the panel of GaLs is governed by the Guardians Ad Litem (Panel) Regulations (Northern Ireland) 1996 (the 1996 Regulations) made under the Children Order. Neither Article 60(7) nor the 1996 Regulations provide for the direct employment of GaLs by NIGALA, which is now predominantly the case. This has proved to be problematic in areas such as discipline and complaints, with NIGALA having to operate disciplinary and complaints procedures outwith those of the wider HSC.

1.3.20 As a consequence, we need to amend Article 60 to enable GaLs to be directly employed (rather than admitted to a panel) and appointed by the courts to represent children in family law proceedings. This is being done by way of clause 124 of the Bill.

**Do you agree with the proposed amendment to enable Guardians ad Litem to be directly employed, rather than admitted to a Panel?**

## **Regulation of Fostering Panels and introduction of a review mechanism for an agency's determination in relation to foster parents**

- 1.3.21 The Department considers it important to be able to regulate the operation of fostering panels in the north of Ireland by prescribing (by way of regulations) the constitution and membership of fostering panels, their functions and how panel meetings should be conducted.
- 1.3.22 Fostering panels currently operate in the north of Ireland, but without a statutory basis. Fostering panels have been operating on a statutory basis in England since 2002 under the Fostering Services (England) Regulations 2011. These Regulations were made under the Children Act 1989 and the Care Standards Act 2000 and they revoked and substantially replaced the Fostering Services Regulations 2002.
- 1.3.23 Clause 118 of the Bill inserts new Article 28A in the Children Order which provides a regulation making power in relation to fostering panels.
- 1.3.24 The Department also proposes, by way of clause 118 of the Bill, to introduce an independent review mechanism to enable reviews of decisions (by fostering panels) about whether a person should be approved to foster or whether a person should continue to be approved to foster.
- 1.3.25 The mechanism will be comparable to the independent review mechanism for adoption decision making. The intention is that both mechanisms will be able to operate in the same way, which will provide the scope to have a single body/organisation dealing with reviews of both fostering and adoption panel decisions.

**Do you agree with the proposal to place fostering panels in Northern Ireland on a statutory basis?**

**Do you agree with the introduction of an independent review mechanism to enable independent reviews of decisions made by fostering panels?**

## Chapter 2

### Other policy issues on which we wish to consult, with a view to including in the Bill

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Amendments that have occurred to Adoption and Children legislation from 2002 in other jurisdictions are outlined in sections 1 – 3 of Annex A to this consultation document. Some of these amendments already exist in legislation in the north of Ireland and some may be subject to further change in those jurisdictions. Some of the amendments have already been replicated in the Adoption and Children Bill and have been highlighted in Chapter 1.

Some of the provisions are not deemed to be appropriate in a north of Ireland context, either because of our size, structure or because existing non-statutory arrangements are considered to be working well. However, we are seeking your views on whether some provision which we consider would further strengthen provision either already in place or contained within the Bill, should apply in the north of Ireland and whether it should be included in the Adoption and Children Bill.

#### **2.1 Adoption Support Services: Duty to provide information**

2.1.1 Section 6 of the Children and Families Act 2014 inserts a new section 4B into the Adoption and Children Act 2002 [paragraph 1.19 of Annex A refers]. Section 4B(1) places a new duty on local authorities in England to provide a range of information about adoption support services and other prescribed information, to any person who has contacted the local authority to request information about adopting a child, or has informed the local authority that they wish to adopt a child. Local authorities must also provide such information to any person within their area who they are aware is the parent of an adopted child or to any such person upon request. This section also

makes provision for regulations to prescribe the circumstances in which a local authority does not need to provide the information.

- 2.1.2 Section 4B(2) sets out the information that the local authority must provide, including information about the adoption support services available in their area and information about assessments for adoption support services. It also makes provision for regulations to prescribe other information that must be provided by the local authority.
- 2.1.3 The duty will require local authorities actively to provide the information to individuals rather than simply making information available which people would then have to seek out by themselves.
- 2.1.4 Local authorities are under a duty, via the Adoption Support Services Regulations 2005, to carry out an assessment of need for adoption support when requested by an eligible person. Evidence suggests that not only are many adoptive parents unaware of this; but also, when those eligible do request an assessment, not all local authorities are carrying out the assessments.
- 2.1.5 The Department considers that all adoptive families who need it should get an assessment of need as early as possible, so that they can be offered the support they need to give the child the best chances in life and provide the best possible support to the adoptive placement.
- 2.1.6 For this to happen, prospective adopters and adopters need to be aware of their rights to support and the provision available. Increased awareness and provision of support has the potential to aid recruitment of prospective adopters, make adopters more open to adopting those children who currently wait the longest to be placed, and reduce the chances of adoptions breaking down.

- 2.1.7 The Department is of the view that the Bill should be amended to include provision to place a duty on an adoption authority (i.e. the HSC Board and HSC Trusts) to provide information about adoption support services.

**Do you agree that the Bill should be amended to introduce a duty on an adoption authority to provide information about support services?**

**If you do not agree, please give your reasons.**

## **2.2 Provision of accommodation for children by voluntary organisations**

2.2.1 Articles 74 to 78A of the Children Order deal with the provision of accommodation for children by voluntary organisations. These Articles make provision for the type of placements that a voluntary organisation<sup>2</sup> may make and places the same duties on a placing voluntary organisation that Article 26 places on a Health and Social Care Trust, i.e. to safeguard and promote child's welfare; ascertain the wishes and feelings of appropriate persons; give due consideration to wishes, feelings, religion, racial origin and cultural and linguistic background.

2.2.2 Article 77 places duties on the Health and Social Care Trust of the area in which a child has been placed by a voluntary organisation under Article 75 to: ensure the voluntary organisation is safeguarding and promoting the welfare of the child; arrange for the child to be visited; and take action where the child's welfare is not being safeguarded and promoted. Article 78 prevents anyone who has been disqualified from private fostering under Article 109 from working in a voluntary children's home, unless their

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<sup>2</sup> 'voluntary organisation' is defined in Article 74(1) of the Children (NI) Order 1995 as any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members.

disqualification has been disclosed to RQIA and RQIA has given written consent for the person to be employed.

2.2.3 This is a legacy arrangement and is no longer reflected in current practice. Indeed, the practice of voluntary organisations making placements ceased some decades ago. Today, when a child requires alternative living arrangements, they become looked after by a Health and Social Care Trust. The Department is proposing to remove the statutory provision for this legacy arrangement by repealing Articles 74 to 78A of the Children Order.

2.2.4 A separate arrangement exists under Article 28 of the Children Order and under regulation 8 of the Foster Placement (Children) Regulations (NI) 1996 for voluntary organisations to discharge duties on the Trusts' behalf (including the approval of foster carers without further approval by Trusts) subject to a written agreement with the Trust. A number of voluntary organisations have obtained agreement to do so. There is no intention to change this provision.

**Do you agree that Articles 74 to 78A of the Children Order should be repealed?**

**If not, please state your reasons and provide any examples of where a voluntary organisation may need to provide accommodation for children without the prior involvement of a HSC Trust.**

## **2.3 Contact between prescribed persons and adopted person's relatives**

2.3.1 In relation to persons adopted before the coming into force of the Adoption and Children Act 2002 on 30 December 2005, section 98 of that Act allowed for adopted persons and their birth relatives to access intermediary services. Intermediary services facilitate contact between these two groups of people

and can be provided by either a registered adoption support agency or an adoption agency. Originally, access to intermediary services was limited to the adopted person and their birth relatives (defined as any person who, but for his adoption, would be related to him by blood (including half blood), marriage or civil partnership).

2.3.2 That meant that others, who may have good reasons for wishing to make contact with the adopted person's birth relatives, including the adopted person's own children or grandchildren did not have the same rights as the birth relatives and were unable to make contact if the adopted person had not independently contacted his or her birth relatives, as they have no legal right to access intermediary services.

2.3.3 Section 1 of the Children and Families Act has now introduced the right of descendants of adopted people to access records and intermediary services. It inserts in section 98 of the Adoption and Children Act 2002 (pre-commencement adoptions: information), after subsection (1) the power to make regulations under section 9 for the purpose of facilitating contact between persons with a prescribed relationship to a person adopted before the appointed day and that person's birth relatives. Following consultation, the Adoption Information Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 were amended with effect from 31 October 2014 to extend intermediary services to all other relatives of an adopted person. This is defined in the Regulations as anyone who is related to the adopted person by blood (including half-blood), marriage or civil partnership (but who does not already have access to intermediary services), or by virtue of their adoption. It therefore includes, but is not limited to, the children, grandchildren and great grandchildren of an adopted person. The Regulations also make provision for adopted persons to retain a strong degree of control over their own personal information and history, requiring an intermediary agency to obtain the consent of an adopted person before contact or information sharing is facilitated, unless the adopted person has died or lacks capacity.

2.3.4 Clause 98 of the Bill replicates the provisions in section 98 of the Adoption and Children Act 2002 prior to its further amendment by section 1 of the Children and Families Act 2014. The Department now proposes to further amend clause 98 to replicate section 1 of the Children and Families Act 2014 and will undertake a further consultation on who exactly will have access in the future as part of the regulation-making process.

**Do you agree that the Bill should be amended to enable descendants of adopted people to access records and intermediary services?**

**If you think such descendants should not be allowed access, please provide your reasons.**

## **2.4 Dually Approved Carers**

2.4.1 In line with the *Regional Policy on Permanence*<sup>3</sup>, Trusts are required to ensure that children are placed in their “final placement” in a stable family as soon as possible whether that is with birth parents, other relatives or with an alternative “family for life”. One of the options for this is through adoption by another family.

2.4.2 There are currently three key points on the child’s journey where they can be placed with families who may go on to adopt them. These are:

- at an early point in the planning process before a final care plan has been confirmed but where there are strong indicators that rehabilitation is not going to be an option (Point A);
- when the Health and Social Care Trust has agreed that permanence by way of adoption is in the child’s best interest, has included this in the

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<sup>3</sup> The Regional Policy on Permanence is currently being reviewed by the Health and Social Care Board.

child's care plan and the legal process of securing adoption for the child is on-going (Point B);

- after the Trust's plan to achieve permanence by adoption has been agreed by the court and a Freeing Order has been granted (Point C).

2.4.3 The types of carers who can provide care at these three corresponding points in the child's journey are (A) concurrent carers, (B) dually approved carers (foster carers who have also been approved to adopt, or prospective adopters who have also been approved to foster), (C) prospective adopters.

2.4.4 A dual approval placement comes about where an identified child with a best interest decision (that adoption is appropriate) is matched with prospective adopters. At this point in the child's journey the Trust is clear it is pursuing adoption as the care plan for the child, that attempts to rehabilitate the child have failed or are untenable and there is an urgent need to secure a stable permanent family for the child. The child is placed with the prospective adopters on a temporary fostering basis, allowing the Trust to proceed with Care Order and Freeing Order applications through the Court. These applications can take some time and in order to give the child an early sense of permanence and security and encourage the development of attachments at the earliest stage possible, the prospective adopters care for the child on a temporary fostering basis, allowing the child to be in their placement while the legal process is completed.

2.4.5 When the date of placement on a fostering basis with the prospective adopters is agreed, the Freeing Order application may not be disposed of. However, the prospective adopter is expected to treat the placement similarly to an adoptive placement and would be required to make appropriate leave from work arrangements etc. in order to provide a safe and stable home for the child. It is on this basis that the prospective adopter applies for leave and pay entitlements awarded to actual adoption placements.

- 2.4.6 Whilst dual approval placements have been one of a range of placement options in the north of Ireland for some years, carers providing such placements previously had no legal entitlement to adoption pay and leave at time of placement. The Work and Families Act (NI) 2015 has now introduced, from April 2015, provisions to allow foster parents who are a child's intended adoptive parents to access adoption pay and leave arrangements, including shared parental leave and paid time off for attending pre-adoption appointments to dually approved carers.
- 2.4.7 Fostering for adoption arrangements in England are broadly equivalent to Dual Approval and Concurrent Planning. The Children and Families Act 2014 amends section 22C of the Children Act 1989 to create a power requiring a local authority in England to consider placement of a child with dually approved carers when it is considering adoption, or where the decision has been made that the child ought to be placed for adoption (but where the agency does not yet have the authority to place the child through either a placement order or acquisition of parental responsibility).
- 2.4.8 The Department proposes to place a legal duty on adoption agencies in the north of Ireland to consider the placement of a child with dually approved carers. This would require amendment to Article 27 (Accommodation and maintenance for children) of the Children Order, similar to the amendments made to section 22C of the Children Act 1989. Such amendment would also support the provisions on adoption leave and pay entitlements included in the Work and Families Act (NI) 2015.

**Do you agree that a duty should be placed on adoption agencies in the north of Ireland to consider the placement of a child with dually approved carers?**

**If you do not agree, please provide your reasons.**

## **2.5 Proposals relating to Private Fostering and Informal Kinship Care**

2.5.1 Given recent policy developments and the increasing number of children living with informal kinship carers, the British Association for Adoption and Fostering (BAAF) Northern Ireland was commissioned by the HSC Board to undertake both a review of research and policy in relation to informal kinship care across a number of countries. The review of policy *Informal Kinship Carers A Policy to inform Practice* highlighted particular messages for practice and policy in the north of Ireland.

2.5.2 For the purposes of this consultation, the Department has considered the recommendations which relate to legislative change to determine whether the Adoption and Children Bill should include provision to effect that change.

### **2.5.3 Recommendation 13**

*“The Department should undertake work to ascertain the number of private foster carers and amend the Children Order 1995 in line with the Children Act 2004 to strengthen arrangements in respect of such carers....”*

2.5.4 In England, the law on private fostering arrangements and the role of local authorities with respect to them is set out in Part IX (Articles 66 to 70) of, and Schedule 8 to, the Children Act 1989 and in the Children (Private Arrangements for Fostering) Regulations 2005. Those provisions require those involved in a private fostering arrangement to give the local authority advance notice of the intention to privately foster. Privately fostered children are not ‘looked after’ children within the meaning of section 22 of the Children Act 1989 and a local authority does not get involved in the making of such arrangements, but has to satisfy itself that the welfare of privately fostered children in its area is satisfactorily safeguarded and promoted. Local authorities also have powers to impose requirements on arrangements and to prohibit them altogether.

- 2.5.5 Sections 44 to 47 of the Children Act 2004 amended section 67 of the Children Act 1989. Section 44 of the Children Act 2004 inserted new subparagraph (2A) which provides that regulations under (2)(b) may impose requirements as to the action taken by a local authority for the purposes of discharging its duty under subsection (1) (duty of local authorities to satisfy themselves that the welfare of children who are or are proposed to be privately fostered within their area is being satisfactorily safeguarded.....etc) where they have received notification of a proposal that a child is to be privately fostered.
- 2.5.6 Section 44 also inserted, at section 67(6), a power to make regulations requiring a local authority to monitor the way in which the authority discharges its functions under Part IX.
- 2.5.7 The Children (Private Arrangements for Fostering) Regulations 2005 set out the requirements referred to in paragraphs 2.5.5 and 2.5.6 and include a requirement for the local authority to arrange for an officer to carry out visits and establish such matters listed in Schedule 3 to those Regulations, a requirement to monitor the way in which they discharge their functions in respect of privately fostered children and to appoint an officer of the local authority for that purpose.
- 2.5.8 Articles 108 and 112 of the Children Order are the north of Ireland's equivalents to section 67 of, and paragraph 7 of Schedule 8 to, the Children Act 1989. Regulations made under Articles 108(2) and 112(1) and (2) of the Children Order are the Children (Private Arrangements for Fostering) Regulations (NI) 1996. Notably, the provision in Article 108 of the Children Order, as it relates to private fostering, does not extend to children whom it is proposed to privately foster.
- 2.5.9 The Department would welcome views on whether Article 108 of the Children Order should be amended to include children who are proposed to be privately fostered.

**Do you agree that the Children Order should be amended, as outlined above, to include children who are proposed to be privately fostered?**

**If you do not agree, please give your reasons.**

2.5.10 The Department would also welcome views on whether the Children Order should also be amended to:

- insert a power to impose requirements, by way of regulations, as to the action to be taken by an authority for the purposes of discharging its duty under subsection (1) [equivalent to new section 67(2A) of the Children Act 1989]. This would include a requirement for the authority to arrange for an officer to carry out visits, speak to the proposed private foster carer, members of his household, the child and others and consider a range of relevant matters (to be specified in the regulations) and make a written report to the authority; and
- provide a power to make regulations to require an authority to monitor the way in which it discharges its functions and to appoint an officer of the authority for that purpose [equivalent to new section 67(6) of the Children Act 1989).

**Do you agree that the Children Order should be amended to include powers to make regulations:**

- **in respect of the carrying out of an authority's duty in relation to privately fostered children?**
- **to require an authority to monitor the way in which it discharges its functions?**

**If not, please give your reasons.**

**Are there any other provisions relating to privately fostered children that you would like to see introduced?**

#### 2.5.11 Recommendation 15

*“The DHSSPS should consider amending Article 18(6) of the Children Order to enable regular payments to be made, in specified situations, to informal kinship carers.”*

2.5.12 As outlined in paragraph 1.3.7, this has been addressed by way of amendment to Article 18(6) to lift the restriction on the making of cash payments by removing the phrase ‘in exceptional circumstances’.

#### 2.5.13 Recommendation 16

*“The DHSSPS should advance its work to deliver Special Guardianship Orders to promote permanence for children who are not available for adoption.”*

2.5.14 As outlined in paragraph 1.1, the Adoption and Children Bill contains provision to introduce Special Guardianship Orders. The Department is also seeking views on whether those provisions should be further amended - paragraphs 1.2.14 – 1.2.26 refer.

## **2.6 Northern Ireland Adoption and Children Act Register**

2.6.1 In Key Action 7 of ‘Adopting the Future’, the Department provided a commitment to establish a database to provide agencies with improved information to ensure that children are provided with the best possible choice of adoptive families. The HSC Board currently operates and maintains a Regional Adoption Information System for the north of Ireland.

2.6.2 The Department has now decided to place the database on a statutory basis and clauses 126 to 131 of the Adoption and Children Bill provide the necessary powers for the Department to make regulations requiring the HSC Board (or a designated/nominated organisation) to establish and maintain an information system to be known as the Northern Ireland Adoption and

Children Act Register. Scotland has similarly moved to place the Scottish Adoption Register on a statutory basis, through provisions included in the Children and Young People (Scotland) Act 2014.

2.6.3 Section 7 of the Children and Families Act 2014 is now amending the Adoption and Children Act 2002 to insert a new section 128A into that Act, which provides for regulations to allow for the search and inspection of the register by prospective adopters who are suitable to adopt a child to enable them to identify a child on the register for whom they might be appropriate adopters. An initial pilot is in operation in England to determine the effectiveness of this provision on the number of matches made between prospective adopters and children who await adoption.

2.6.4 The Department considers that, due to the size of the population in the north of Ireland, the proposal to allow prospective adopters in the North to search and inspect prescribed information about children who are being considered for adoption would not be appropriate as there would be a risk of identification of the child or the adopted child in the future. However, before making a final policy decision, the Department would welcome views on whether respondents agree, or whether such amendment should be made to the Bill provisions in order to allow prospective adopters to undertake such searches and inspections.

**Please give your views on whether prospective adopters should be allowed to search and inspect the NI Adoption and Children Act Register, when established in law?**

## **2.7 Northern Ireland Guardian Ad Litem Agency (NIGALA) – proposed change of name**

2.7.1 As part of the RQIA review of the governance arrangements of NIGALA (2012) a recommendation was made that the Department should consider

changing the name of the 'Guardian Ad Litem' and the title of the Agency, to make the role and purpose of the Guardian more meaningful to children and young people.

2.7.2 The NIGALA undertook a targeted consultation with key stakeholders on proposals to refine the role of the Guardian Ad Litem to improve the quality of service to children, making best use of professional time and minimising delay. Views were also sought in respect of a name change in line with the RQIA recommendation. There was broad consensus that the existing name was well established and understood and did not warrant change.

2.7.3 The consultation with children and young people, facilitated by the voluntary organisation, the Voice of Young People in Care (VOYPIC), indicated that the majority of young people felt that NIGALA should have a name change as they agreed that the current name does not make it clear what the service is or involves. They indicated a preference for words that reflected their understanding of the Guardian role but found it difficult to provide suggestions for a new name.

2.7.4 Subsequent to the consultation response, VOYPIC facilitated a competition on behalf of NIGALA to identify suggestions for a name change. From a total of eight suggestions, four were shortlisted and two polls undertaken (one via the VOYPIC facebook page and one at the VOYPIC graduation event). The proposals are therefore:

- a) Retain the existing name of the **Guardian ad Litem**;
- b) Consider the proposal emerging from the VOYPIC consultation, namely a change of name to the **Children's Court Guardian**. The Northern Ireland Guardian Ad Litem Agency would be known as the Northern Ireland Children's Court Guardian Agency; or
- c) Provide an alternative suggestion to these two proposals.

**Do you consider that the name of the Guardian ad Litem should be retained? If so, why?**

**If you think that the name should be changed, do you agree that it should be changed to the Children’s Court Guardian (with the Northern Ireland Guardian ad Litem Agency becoming known as the Northern Ireland Children’s Court Guardian Agency)?**

**If you do not agree with the name proposed, please provide any alternative suggestions.**

## **2.8 Kinship Care Orders**

2.8.1 Kinship care is when a child is looked after by their extended family or close friends, if they cannot remain with their birth parents. Kinship care falls into two categories – Formal and Informal. There is no statutory definition of kinship care in the north of Ireland.

### Formal

2.8.2 Formal kinship care arrangements are made by a HSC Trust under Article 27 of the Children Order in respect of a looked after child. The arrangement is governed by Minimum Kinship Care Standards published by the Department in 2014. Article 27(3) of the Children Order refers to a kinship carer, with whom a looked after child has been placed, as an ‘authority foster parent’. All Regulations which apply to either looked after children or to fostering arrangements apply to kinship care arrangements. Formal kinship carers are paid in line with non-kinship foster carers (authority foster carers).

### Informal

2.8.3 In informal kinship care arrangements, the child is cared for by family without having been placed there by a HSC Trust. In these circumstances the child is not looked after and the Minimum Kinship Care Standards do not apply.

#### Kinship Care Scotland

2.8.4 In Scotland, under the Looked After Children (Scotland) Regulations 2009, a kinship carer is defined as "a person who is related to the child (through blood, marriage or civil partnership) or a person with whom the child has a pre-existing relationship". Kinship care includes children who are looked after and are placed in a formal kinship care arrangement by the local authority. The Looked After Children (Scotland) Regulations 2009 gave local authorities the power to pay an allowance to kinship carers of looked after children living in kinship care, for the first time.

2.8.5 Kinship care also includes non looked after children, who live in an informal kinship care arrangement. These children may be subject to an order under section 11 of the Children (Scotland) Act 1995 (broadly equivalent to an order under Article 8 of the Children Order) or may be living in a completely private arrangement with extended family, with no local authority involvement at all.

2.8.6 The Children and Young People (Scotland) Act 2014 (the 2014 Act) introduced Kinship Care Orders with effect from April 2016. Under the 2014 Act, a Kinship Care Order is not a court-directed order. A Kinship Care Order is a label used in the Act to describe certain forms of existing court orders granted under section 11 of the Children (Scotland) Act 1995, for example, court orders relating to the acquisition of parental responsibility etc.

2.8.7 A Kinship Care Order is defined in section 72 of the 2014 Act as:

- an order under section 11(1) of the 1995 Act which gives to a qualifying person the right mentioned in section 2(1)(a) of that Act in relation to a child,

*(section 2(1)(a) provides that (1) Subject to [Section 3(1)(b), and (d) and (3)] 1 of this Act, a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right—*

*(a) to have the child living with him or otherwise to regulate the child's residence;)*

- a residence order under section 11(2)(c) of the 1995 Act which has the effect that a child is to live with, or live predominantly with, a qualifying person, or
- an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.

In each case, the Kinship Care Order relates to the 'qualifying person' to whom assistance may be provided (see below).

#### Assistance to be provided under a Kinship Care Order

2.8.8 Under section 71 of the 2014 Act, a local authority must make arrangements to ensure that kinship care assistance is made available. The assistance may take the form of counselling, advice or information about any matter; financial support (or support in kind) of any description; and any service provided by a local authority on a subsidised basis, and may include assistance which a person was entitled to from, or being provided with by, a local authority, immediately prior to a person becoming entitled to assistance. This allows for a person to continue to receive assistance which they received from a local authority prior to their becoming eligible.

2.8.9 In 2015 the Scottish Government announced an additional £10.1 million per annum funding for kinship carers. This funding will be made available to:

- all kinship carers who provide care to children who are looked after; and
- cover the cost of assistance provided to kinship carers who provide care to children who are not looked after but who are subject to a section 11 Order (which constitutes a Kinship Care Order), and are or were:

- previously looked after;
- placed with involvement from the local authority; or
- at risk of becoming looked after.

2.8.10 Under the £10.1m fund, kinship carers covered by this agreement should receive an allowance equivalent to the minimum rate provided to foster carers in their local authority area.

2.8.11 In the north of Ireland, kinship carers of looked after children receive an allowance equivalent to that of foster carers (kinship care allowances). In addition, residence order allowances are paid to kinship carers who care for children who were, prior to the making of the residence order, looked after, subject to means testing (residence order allowances). Residence order allowances do not have a statutory basis.

**Do you consider that a Kinship Care Order should be introduced in the north of Ireland?**

**If subject to a Kinship Care Order, should an allowance be paid? If yes, should it be equivalent to a fostering allowance?**

**Should it be subject to means-testing?**

**In addition to allowances paid to kinship carers who provide care to children who are looked after, do you consider that allowances should be payable to kinship carers who provide care to children who are not looked after but who are subject to an Article 8 Order (a Kinship Care Order, if introduced), and are or were:**

- previously looked after;
- placed with involvement from the HSC Trust; or
- at risk of becoming looked after.

## 2.9 Corporate Parenting

2.9.1 Corporate parent is a label applied to a local authority/ HSC Trust in the exercise of duties to looked after children. The label is intended to signify that a local authority or HSC Trust has a legal and moral duty to provide the kind of support that any good parents would provide for their own children. This includes enhancing children's quality of life as well as keeping them safe.

2.9.2 In the north of Ireland, the term “corporate parent” is not currently defined in legislation. However, Article 26 of the Children Order requires every authority to safeguard and promote the welfare of the children in its care and to make available services that are available for children cared for by their own parents. In England, section 22(3) of the Children Act 1989 imposes a similar duty on local authorities.

2.9.3 England is now proposing to place corporate parenting onto a statutory footing by way of the Children and Social Work Bill, which is currently making its passage through Westminster. The Bill sets out a framework of corporate parenting principles that overlay the existing responsibilities of local authorities towards looked after children and those leaving care to make clear what it means for the authority as a whole to act as a good parent. It will introduce a requirement for local authorities in England, in respect of looked after children, relevant and former relevant children to have regard to the need:

- to act in the best interests, and promote the physical and mental health and well-being, of those children and young people;
- to encourage those children and young people to express their views, wishes and feelings;
- to take into account the views, wishes and feelings of those children and young people;

- to help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners;
- to promote high aspirations and seek to secure the best outcomes for those children and young people;
- for those children and young people to be safe, and for stability in their home lives, relationships and education or work;
- to prepare those children and young people for adulthood and independent living.

2.9.4 Corporate parenting in Wales is set out in guidance for Councils, “*If this were my child....a guide for councillors to being a good corporate parent to children in care and care leavers*”. Scotland has extended the responsibility of corporate parent to bodies outside of the local authority and formalised their duties within the Children and Young People (Scotland) Act 2014.

2.9.5 The Department now wishes to consider whether it would be appropriate to introduce a statutory concept of corporate parenting in the north of Ireland, in a similar way to what has been proposed for England in the Children and Social Work Bill.

**Do you consider that Corporate Parenting should be introduced in legislation in the north of Ireland?**

**If so, should statutory corporate parenting here be guided by the statutory principles set out in the Children and Social Work Bill?**

**Should the responsibility of corporate parent be extended to bodies other than HSC bodies, similar to the approach taken in Scotland?**

**If yes to the above, which bodies should corporate parenting extend to?**

**If no to the above, please give your reasons.**

## **2.10 Approved Home Childcarers**

2.10.1 Under Article 119(4) and (6) of the Children Order, a nanny is someone who is paid by you to look after your child in your home. They can live in or come to your home for set periods of time.

2.10.2 A home childcarer is a nanny who has been approved by the Health and Social Care Trust under the Home Childcarer Approval Scheme. This Scheme was established by the Department of Health using powers within the Tax Credits Act 2002.

2.10.3 The Home Childcarer Approval Scheme provides recognised status for individuals providing childcare in a child's own home. Whilst there is no legal requirement on nannies to register with the Scheme, those who do apply are

subject to enhanced criminal record checks undertaken by the relevant Health and Social Care Trust for the area, providing a basic level of assurance for parents. Parents may also be eligible for working tax credits, or tax exempt childcare vouchers, towards the cost of an approved home childcarer, whereas they may not be eligible for these if the nanny they employ is not approved.

2.10.4 The Tax Credits Act 2002, under which the Home Childcarer Approval Scheme was established, is due to be repealed in 2020. The Home Childcarer Approval Scheme will automatically close once the Act is repealed.

2.10.5 The Department wishes to take a power to enable it to establish a new voluntary registration scheme for nannies, which would replace the current Home Childcarer Approval Scheme. This reflects the position in England, where a voluntary register has been established using powers in the Childcare Act 2006. The new power would also enable the Department to introduce further registration schemes for other types of childcare currently exempt from registration, if required in the future. Any further voluntary schemes would be subject to full public consultation prior to their introduction.

**Do you agree that a power should be taken to introduce voluntary 'childcare' registration schemes in the north of Ireland?**

## **2.11 Childcare Agencies**

2.11.1 In England and Scotland, 'childcare agencies', which may employ a nanny on behalf of a parent, are required to be registered with a regulatory body. Within England, the register is maintained by OFSTED in line with powers in section 51A of the Childcare Act 2006, while in Scotland, such agencies

must register with the Care Inspectorate in accordance with section 7 of the Regulation of Care (Scotland) Act 2001.

- 2.11.2 Agencies aim to ease the legal and administrative burdens, such as PAYE tax contribution, National Insurance or employers' liability, which some parents may find cumbersome when employing a nanny directly. The agency will be the employer, fulfilling all of the complex legal and financial responsibilities. In addition, it usually provides cover in cases when the nanny is ill or on leave, providing greater flexibility for parents.
- 2.11.3 A childcare agency may also employ childminders, who look after a child within the childminder's own home, or provide staff for private day care facilities.
- 2.11.4 The Department wishes to take a power to register childcare agencies which employ nannies, childminders and/or day care staff. A registration process will ensure that agencies operate good practice in all areas, providing greater assurance for parents. Introduction of legislation for childcare agencies may also allow them to be exempt from VAT in certain circumstances, in a similar way to other childminder or day care services.

**Do you agree that the Department should take a power to introduce and regulate childcare agencies in the north of Ireland?**

- 2.11.5 The Regulation and Quality Improvement Authority (RQIA) currently registers a range of providers of other care services, such as domiciliary care agencies and nursing agencies. However, childminders and day care providers currently register with the local HSC Trust. The Department is seeking your views on where the responsibility for regulation (registration and inspection) of childcare agencies should lie, should this be introduced.

**If introduced, should the HSC Trusts or the RQIA be responsible for the regulation of childcare agencies?**

2.11.6 Under Article 119(4) and (6) of the Children Order, there is an anomaly over the legal definition of a nanny whereby individuals employed directly by parents to look after a child in that child's own home are considered to be nannies, while those employed through an agency are considered childminders. Under current arrangements, a childminder must be registered with the local HSC Trust, while a nanny is not required to be registered. To remove this anomaly, we propose to amend the definition of a nanny to include those employed by agencies on behalf of a parent of the child.

**Do you agree that the definition of a nanny, provided in Article 119(4) and (6) of the Children Order, should be amended to include those employed by agencies?**

## **2.12 Extending Care for Care Leavers**

2.12.1 Currently in the north of Ireland, leaving and aftercare services are provided to young people who are leaving care and to support those who have left care to improve their life prospects as they make the transition to independent living. Central to this are the duties placed on HSC Trusts to assess and meet young people's individual needs up to the age of 21 and beyond 21 if they are still engaged in education, employment or training .

2.12.2 The main aims of the Children Order, as amended by the Children (Leaving Care) Act (NI) 2002, are to ensure that young people do not leave care until they are ready to do so; improve the assessment, preparation and planning for young people leaving care; provide better personal support for young

people after they leave care; and improve the financial support available to care leavers.

2.12.3 HSC Trusts are required to take into account a range of issues when assessing and meeting the needs of those preparing to leave care and those who have left care. These include:

- the qualifying criteria for leaving and aftercare arrangements;
- the assessment of need;
- the preparation and review of pathways plans;
- the functions of personal advisers;
- the assistance young people will receive with education, training and accommodation.

2.12.4 The Going The Extra Mile (GEM) scheme, launched in 2006, aims to promote continuity and stability of living arrangements in post care life for young people living with foster carers by ensuring that appropriate and agreed levels of financial support are available to assist carers to continue to meet the care, accommodation and support needs of these young people until they reach the age of at least 21. The GEM Scheme is facilitated under the Children Order, the Children (Leaving Care) Regulations (NI) 2005 and Volume 8 of the Children Order Guidance – Leaving and Aftercare, however, it is not currently a statutory requirement.

2.12.5 Care leavers do not have the safety net and support provided in the family home in the wider population. Other young people receive support and guidance from their parents well into their mid-twenties and beyond; which can include a place to live, guidance and financial support. It generally continues as the young person engages in further or higher education, employment or training.

2.12.6 In England, the Children and Social Work Bill 2016 is proposing to introduce duties on a local authority to provide advice and support to care leavers and to provide a Personal Advisor if requested, up to the age of 25. The local

authority must also carry out an assessment of need and prepare a pathway plan (setting out advice and support the local authority intends to provide). The local authority must take steps to make the care leaver aware of their rights to seek additional support and advice.

- 2.12.7 In Scotland, from 2015 young people have the right to remain “looked after” up to 21 and, upon request by the young person and subject to an assessment, a care leaver’s entitlement to advice, guidance and assistance may be extended up to their 26<sup>th</sup> birthday.

**Do you consider that the GEM scheme should be placed on a statutory footing? If not, please explain.**

**Do you consider that some services should be extended here to include care leavers up to the age of 25, on request?**

**If not, please explain.**

## **2.13 Children Order Annual Report**

- 2.13.1 Article 181 of the Children Order states that *“The Department shall, after consultation with the Lord Chancellor, the Department of Education and the Department of Finance and Personnel, cause an annual general report on the operation of this Order to be prepared and laid before the Assembly.”*

- 2.13.2 The first report, *“Children Order Report 1999”* was published by the Department in 1999. The Report contained statistical information covering the period from commencement of the Children Order on 4 November 1996 until 31 March 1998. It also contained information on key developments up to April 1999. The Report provided information and statistics in relation to the Courts, NIGALA, Family Support Services for Children in Need, Child Protection, Children Looked After by HSS Trusts, Education Welfare

Service, and Day Care Services for Children aged under 12. Due to competing work pressures, no further reports have been produced by the Department.

2.13.3 However, there are a number of other reporting mechanisms now in place which provide key statistical information on the operation of certain provisions of the Children Order. These include:

- Children Order Advisory Committee (COAC) Annual Reports – to date COAC has produced 12 such reports, setting out business conducted by COAC and providing statistical data on public and private law applications and orders under the Children Order.
- NIGALA Annual Reports and Statistics – providing comparative annual statistics in relation to: case numbers by proceedings type; case duration; Court transfers; Guardian ad Litem recommendations and Court Orders granted; the age and gender of children subject to proceedings.
- Delegated Statutory Functions Reports - on a six monthly basis, HSC Trusts report to the HSCB on those statutory functions which have been delegated by the HSCB to HSC Trusts. This includes those statutory functions contained in the Children Order. The HSCB then produces an annual report setting out this information on a regional basis. Reports include information in relation to Children In Need, Child Protection, Children In Care, Care Leavers, Fostering, Adoption, Early Years, Separated Children.

2.13.4 In England and Wales, the Children Act 1989 does not contain any such requirement for an annual report to be prepared in relation to the operation of that Act.

2.13.5 Taking into account the other reporting mechanisms which are now in place, the production of an additional report, under Article 181 of the Children Order, would, in the main, replicate the data which has already been provided in the other reports. The Department is therefore seeking views on whether the requirement set out in Article 181 of the Children Order for the Department to produce an annual report should be removed. Alternatively, Article 181 could be amended to require such a report to be provided every 3 years, rather than annually as currently prescribed.

**Do you consider that Article 181 of the Children Order should continue to apply, be repealed or amended?**

**If you consider that reporting under Article 181 of the Children Order should be retained, please advise how frequently the Department should be required to provide such a report.**

## **2.14 Personal Education Plans**

2.14.1 Personal Education Plans (PEPs) are intended to promote positive educational outcomes for children and young people in care. PEPs identify the actions needed to enable the child or young person to achieve their full potential. A PEP is the overarching education plan for the individual which builds on their views, bringing together other education plans including the Individual Education Plan, Statement of Special Educational Needs and informs the care plan for a looked after child or young person.

2.14.2 A PEP not only serves as a record of academic progress and achievement but also takes account of social and emotional development and clearly sets out and reviews short term targets in support of longer term educational plans and aspirations held by the child or young person. In addition, a PEP is an opportunity to listen to the child or young person, record his or her hopes and worries and stated aspirations.

2.14.3 The completion of a PEP involves the looked after child, parents, carers, teachers, Education Welfare Service and Social Workers to ensure a comprehensive approach.

**PEPs are a statutory requirement in Britain. Do you consider that PEPs should also be placed on a statutory footing in the north of Ireland?**

## **2.15 Further suggested amendments**

2.15.1 Finally, taking into account the legislative amendments summarised in the Annex that have occurred in other jurisdictions, please let us know whether there are further amendments to adoption and children's legislation that you would like to see introduced in the north of Ireland by way of the Adoption and Children Bill.

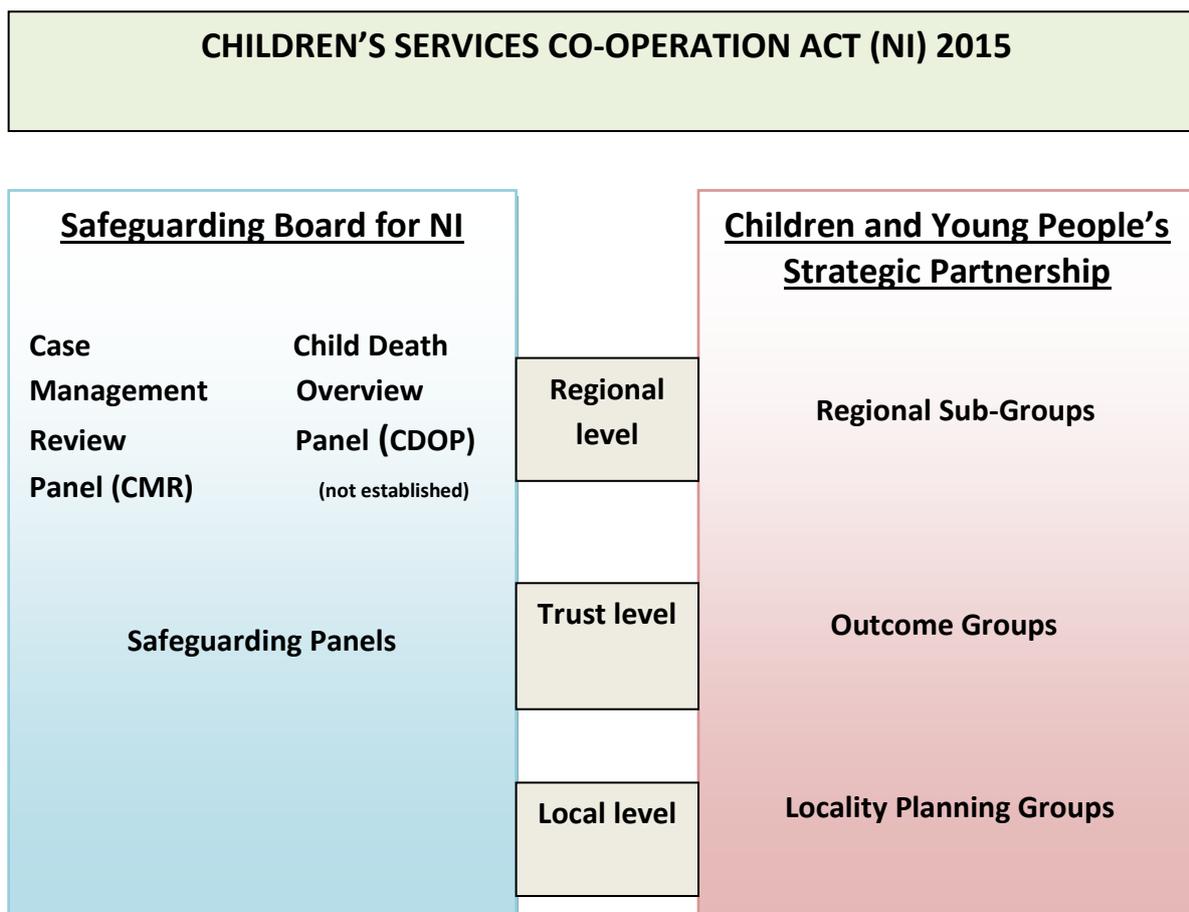
**Are there any other amendments that you think should be considered for inclusion in the Bill? If so, please provide details and the reason why such amendments should be included at this time.**

# Chapter 3

## Children’s Partnership Arrangements

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### Current landscape



### Children and Young People’s Strategic Partnership

3.1 The Children and Young People’s Strategic Partnership (CYPSP) is a multi-agency partnership, led by the HSCB and operated on a non-statutory basis. Membership of the CYPSP includes senior representatives of statutory/voluntary/community organisations, Councils and government departments involved in delivering services to children and families. The CYPSP is chaired by the Chief Executive of the HSCB.

- 3.2 The objective of the CYPSP is to improve the lives of vulnerable children and young people in Northern Ireland and it aims to plan and provide services for children and young people more efficiently by making joint decisions about the services needed, and funding these services together.
- 3.3 Five Outcomes Groups are responsible for the integrated planning and commissioning of services at a geographic level that is consistent with the HSC Trusts across the north of Ireland. Membership of Outcomes Groups reflects that of the CYPSP in that it includes representatives from statutory agencies and the community and voluntary sector.
- 3.4 Regional sub-groups carry out integrated planning and commissioning for specific groups of children and young people at particular disadvantage. They concentrate on those things which cannot be achieved more locally and have to be worked through by the agencies at a regional level.
- 3.5 Locality Planning Groups are partnerships between statutory, voluntary and community organisations that are working with and for children young people and families at a local geography, such as District Council areas. 29 Locality Planning Groups currently contribute to the outcomes based planning and are part of the structure of the CYPSP, alongside the Outcomes Groups and Regional Sub Groups.

#### Children's Services Planning

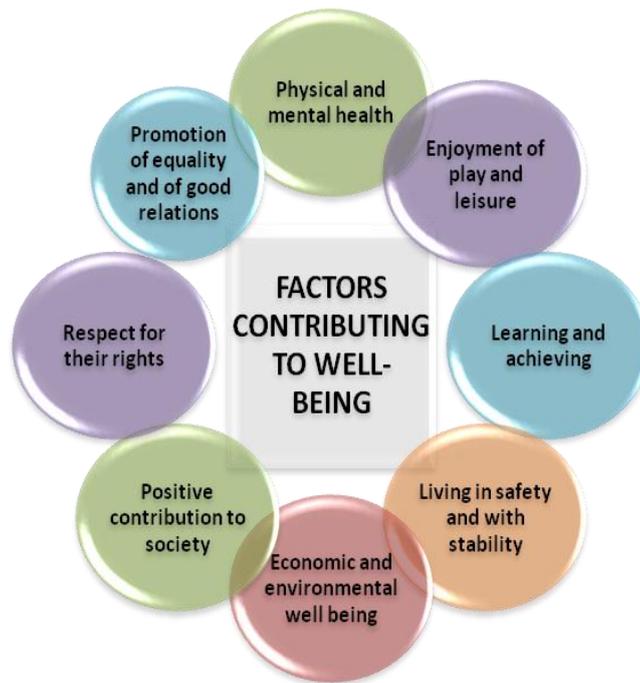
- 3.6 The current legislative basis for children's services planning is found in Schedule 2 to the Children Order (as amended by the Children (1995 Order) (Amendment) (Children Services Planning) Order (NI) 1998), which requires the HSCB to review specified children's services at least once every financial year and to prepare or modify a children's services plan. The annual Children's Services Plan is produced under the auspices of the CYPSP.

### The Safeguarding Board for Northern Ireland

- 3.7 The Safeguarding Board for Northern Ireland (SBNI) was established on a statutory basis under the Safeguarding Board Act (NI) 2011. The SBNI is made up of key partner organisations from the statutory, community and voluntary sectors. It is the statutory objective of the SBNI to co-ordinate and ensure the effectiveness of what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children.
- 3.8 The SBNI is managed and directed by a Chair who is independent of its member agencies and appointed by the Minister of Health. Up to four independent lay members may also be appointed by the Minister.
- 3.9 Section 7 of the 2011 Act requires the SBNI to establish Committees - Safeguarding Panels; a Case Management Review Panel; and a Child Death Overview Panel, although the latter has not been established. Five Safeguarding Panels have been established, located within the geographical area of the five HSC Trusts. Panels are multi-agency and multi-disciplinary and are intended to deliver the strategic aims of the SBNI at a local level. The SBNI also has the statutory power to establish other committees and sub committees as necessary to assist in delivering its functions.

### The Children's Services Co-operation Act (NI) 2015

- 3.10 The Children's Services Co-operation Act (NI) 2015 (the CSCA) came into effect in December 2015 and is designed to improve co-operation amongst Departments and Agencies as they deliver services aimed at improving the well-being of children and young people. The Act requires the Executive to make arrangements to promote co-operation and places a duty on named bodies to co-operate where appropriate. It also requires the Executive to develop and adopt a Strategy which delivers on the stated outcomes for improving the lives of children and young people. The CSCA defines 'well-being' using 8 general parameters.



### Review of the SBNI

3.11 Professor Alexis Jay’s report on the Review of the Safeguarding Board for NI (SBNI)<sup>4</sup> was published in August 2016. The review made 11 Recommendations and 23 Points of Note and these have all been accepted by the Minister of Health. Recommendation 2 of the Review Report states that:

*“In the longer term, consideration should be given to rationalising the various regional bodies concerned with safeguarding, child well-being and child protection, including the creation of a statutory Child Protection Partnership, with an Independent Chair. The wider safeguarding agenda could sit within the revised Children and Young People’s Strategic Partnership.”*

3.12 The Department agrees that there is an imperative to re-focus on child protection, particularly in relation to those organisations which are under a statutory duty to protect children. The Department proposes to include

<sup>4</sup> A Review of the Safeguarding Board for Northern Ireland, Feb.2016, Professor Alexis Jay, OBE, and Kathy Somers <https://www.health-ni.gov.uk/sites/default/files/publications/health/independent-review-sbni-feb16.pdf>

provision in the Adoption and Children Bill to establish a Child Protection Partnership, which will operate under the auspices of the CYPSP.

3.13 However, placing a statutory partnership within a non-statutory arrangement may be problematic. During the passage of the Children's Services Co-operation Bill in the Assembly, the Department gave an undertaking to Stephen Agnew MLA that it would consider the merits of placing the CYPSP on a statutory footing and to use the consultation on the Adoption and Children Bill to seek views on the issue.

3.14 The Department considers that placing the CYPSP on a statutory basis would enable the co-operation duties conferred on children's authorities and children's services providers through the CSCA to be effectively delivered through one central co-ordinating body. It will create a strong statutory partnership to deliver integration at a service delivery level in response to Government priorities and create a formal structure to facilitate the development of the Children's Services Plan.

### **Proposals**

3.15 The Department proposes to include provision in the Adoption and Children Bill to give effect to the following.

### **Structures**

3.16 The Department proposes to:

- Establish a Regional Child Protection Partnership (RCPP) in place of the SBNI;
- Establish Local Child Protection Panels (LCPPs), organised within each of the HSC Trust areas, in place of Safeguarding Panels;
- Place the CYPSP on a statutory basis, to be known as the Regional Children and Young People's Strategic Partnership (RCYPSP);
- Place responsibility for preventative safeguarding with the RCYPSP;
- Place Outcomes Groups on a statutory basis, to be known as Local Children and Young People's Partnerships (LCYPPs);

- Make the RCPP a statutory sub-committee of the RCYPSP;
- Empower the RCYPSP to establish other regional sub-committees to sit alongside the RCPP;
- Require the RCPP to establish a Practice Learning Sub-Committee, in place of the existing CMR Panel of the SBNI;
- Empower the RCPP to establish other sub-committees to sit alongside the Practice Learning Sub-Committee.

### Membership

- 3.17 Membership of the RCYPSP will consist of senior representatives of children’s authorities and other children’s service providers, as defined in section 9 of the CSCA. This membership will also be mirrored at a local level by way of representatives with operational experience on the LCYPPs.
- 3.18 The Department proposes that the RCYPSP should be independently chaired by an individual, appointed by the Minister of Health, who is not an employee of any of the bodies represented on the RCYPSP. In such circumstances where the independent chair is absent or unavailable, the RCYPSP will have the power to appoint an interim chair from within the current membership for an initial period not exceeding 6 months. Ministerial approval of the appointment will be required if the interim arrangement is to continue beyond this period.
- 3.19 Those Agencies which have an explicit statutory duty to protect children and young people, that is, the HSCB, HSC Trusts, the PSNI, the Probation Board for NI, the Education Authority and the Youth Justice Agency, will be represented at a strategic level on the RCPP. The Department also considers that, given the specific powers that have been vested to the NSPCC, that organisation should also be a member of the RCPP.
- 3.20 These organisations will also be represented at a local level on the LCPPs. Members of the Panels should have sufficient operational knowledge of child

protection. It is proposed that the LCPPs will be chaired by the Director for Children's Services within the relevant Trust for that Panel.

- 3.21 The RCPP will operate under the auspices of the RCYPSP and, as outlined at paragraph 3.18 above, the Department is proposing that the RCYPSP should be independently chaired. On that basis, the Department considers that it is not necessary for the RCPP to also be independently chaired and is proposing instead to introduce a power for the RCPP to appoint a chair from within its own membership. This could be arranged on a rotational basis, in line with the Public Protection arrangements in the North. Similarly, in such circumstances where the independent chair is absent or unavailable, the RCPP may appoint an interim chair from within the current membership.
- 3.22 The Department does not propose to appoint Lay Members to either the RCYPSP or the RCPP.

### Objectives

- 3.23 The statutory objective of the RCYPSP will be to work together to improve the well-being of children and young people in Northern Ireland. This will be measured in terms of the 8 well-being parameters set out in the CSCA.
- 3.24 The statutory objective of the RCPP will be to work together to protect children and young people in Northern Ireland.

### Functions of the RCYPSP and the RCPP

- 3.25 The RCYPSP will:
- prepare and publish a 3 year strategic plan, supported by annual delivery plans setting out how it will fulfil its statutory objective;
  - collect and analyse data relating to children's well-being parameters to support the development of the plans;
  - collect and consider evidence/research relating to children's well-being parameters to support the development of the plans;
  - pool resources to deliver against the plans;

- engage children & young people on a co-design, co-production basis to develop the plans and deliver against the plans;
- involve statutory and other sub-committees of the RCYPSP in the development & delivery of the plans;
- report annually to the Executive setting out how it has performed against its strategic and relevant annual delivery plan;
- bring any matter to the attention of the Executive or relevant Minister which the RCYPSP considers requires the intervention of government to improve the well-being of children in the north of Ireland.

3.26 The RCPP will:

- prepare and publish a 3 year strategic plan, supported by annual delivery plans setting out how it will fulfil its statutory objective;
- collect and analyse data relating to child protection to support the development of the plans;
- collect and consider evidence/research relating to child protection to support the development of the plans;
- pool resources to deliver against plans;
- engage children & young people, in particular those who have engaged with child protection services, on a co-design, co-production basis to develop the plans and deliver against the plans;
- promote an awareness of the need to protect children;
- establish mechanisms to identify and disseminate the learning from child protection practice;
- report annually to the Minister of Health setting out how it has performed against its strategic and relevant annual delivery plan;
- bring any matter to the attention of the Executive or relevant Minister which the RCPP considers requires the intervention of government to provide children in the north of Ireland with greater protection.

3.27 The Department proposes to include provision to enable the RCYPSP and the RCPP to make Standing Orders to set out the procedures and processes

which will underpin its business. The RCPP will also be provided with powers to share information to enable it to undertake its functions.

**Do you agree that a RCYPSP should be established in statute?**

**If not, please explain why.**

**Do you agree with the Department's proposals relating to the structure, membership, chairing arrangements, objectives and functions of the RCYPSP and the duties and powers to be conferred on it?**

**If not, please explain why.**

**Do you agree that a RCPP should be established, operating under the auspices of the RCYPSP?**

**If not, please explain why.**

**Do you agree with the Department's proposals relating to the structure, membership, chairing arrangements, objectives, and functions of the RCPP and the duties and powers to be conferred on it?**

**If not, please explain why.**

# Chapter 4

## Assessment of Impact

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### **Equality Implications**

- 4.1 A full Equality Impact Assessment (EQIA) was carried out as part of the 2006 *Adopting the Future* consultation. A further screening exercise has been completed in preparation for the current consultation exercise and we now consider that a full EQIA is not required as the Bill will have no differential impact on any Section 75 group.

### **Human Rights**

- 4.2 A statement on compatibility with the United Nations Convention on the Rights of the Child will be included in the Explanatory Notes accompanying the Bill when it is introduced in the Assembly.

### **Regulatory Impact Assessment**

- 4.3 A Regulatory Impact Assessment is being prepared on those consultation proposals that may have a regulatory impact on business, charities or voluntary bodies.

## Chapter 5

# Arrangements for Consultation

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5.1 This consultation document provides an important opportunity for you to consider whether the proposed Adoption and Children Bill will effectively enhance the existing legal framework for adoption and looked after children and to provide a view on whether any further provisions should be included in the Bill.

### How to respond

5.2 There are a number of ways to respond to this consultation, should you wish to do so. **We would strongly encourage you to use the online consultation questionnaire** which can be accessed via the Department's website at [www.health-ni.gov.uk/consultations](http://www.health-ni.gov.uk/consultations) or you can complete and return the consultation questionnaire available on the Department's website.

5.3 Additional copies of the consultation document can be obtained by contacting the Department's Family and Children's Policy Directorate (contact details below).

5.4 We are keen to hear from everyone who will be affected by these proposals. A response may also be submitted in writing to:

#### **Adoption Consultation**

**Family and Children's Policy Directorate**

**Department of Health**

**Room A3.3, Castle Buildings**

**BELFAST**

**BT4 3SQ**

Tel: (028) 9052 2179

Or by email to: [adoption@health-ni.gov.uk](mailto:adoption@health-ni.gov.uk)

- 5.5 The consultation will close on 10 April 2017. Responses received after this date will only be considered in exceptional circumstances and with prior agreement from the Department.
- 5.6 Following this consultation, the Department will produce an analysis of the responses. As indicated above, this consultation is seeking views on the detail of the proposed legislation. Therefore, the questions in this consultation are open. In other words, the questions are not seeking yes or no answers but are seeking comments on the provisions. As a result, the analysis will not be based on quantitative matters (i.e. how many respondents said yes or no to a particular question) but, instead, will be based on qualitative matters (i.e. the points made by respondents).
- 5.7 Following consideration of the consultation responses received, any consequential amendments will be made to the Bill. The Bill will be finalised for introduction into the Assembly in early 2018, with a view to enactment by late 2019.

### **Freedom of Information Act 2000 – Confidentiality of Consultations**

- 5.8 The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
- 5.9 The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the DHSSPS in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by

you in response to this consultation, including information about your identity, should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.

5.10 This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Secretary of State for Constitutional Affairs' Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

5.11 For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk/>)

## Annex A

# Legislative changes in England, Wales, Scotland and the south of Ireland since the introduction of the Adoption and Children Act 2002

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This Annex reflects the amendments that have occurred to Adoption and Children legislation from 2002. Some of these amendments have already been replicated in the Adoption and Children Bill and have been highlighted in Chapter 1 where consultation has not previously taken place. In Chapter 2, we are also seeking your views on whether some provision which we consider would further strengthen provision either already in place or contained within the Bill, should apply in the north of Ireland and whether it should be included in the Adoption and Children Bill.

### **Section 1: England and Wales**

### **Section 2: Scotland**

### **Section 3: South of Ireland**

# Annex

## Section 1 - England and Wales

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### **Children Act 2004**

- 1.1 Part 1 of the Children Act 2004 provides for the establishment of a Children's Commissioner.
- 1.2 Part 2 of the Act gives effect in England to the principal legislative proposals contained in the *Every Child Matters* Green Paper to support better integrated planning, commissioning, and delivery of children's services and provide for clear accountability. In particular, the Act:
- places a duty on local authorities to make arrangements through which key agencies co-operate to improve the well-being of children and young people and widen services' powers to pool budgets in support of this;
  - places a responsibility for key agencies to have regard to the need to safeguard children and promote their welfare in exercising their normal functions;
  - establishes statutory Local Safeguarding Children Boards to replace the non-statutory Area Child Protection Committees;
  - provides for regulations to require children's services authorities to prepare and publish a Children and Young People's Plan which will set out their strategy for services for children and relevant young people;
  - allows for the creation of databases holding information on all children and young people [this has since been removed];
  - allows for the creation of an integrated inspection framework and for inspectorates to carry out joint reviews of all children's services provided in an area.

- 1.3 Part 3 of the Act provides for similar provisions to those in Part 2 to be made in Wales and Part 4 provides for the devolution of CAFCASS functions in Wales to the Assembly.
- 1.4 Part 5 of the Act makes provisions:
- to strengthen the notification arrangements for private fostering, with a reserve power to introduce a registration scheme should these not prove effective;
  - for the level of payments to be made to foster parents caring for looked after children placed with them by local authorities and to foster parents caring for children placed with them by voluntary organisations;
  - to create a new duty for local authorities to promote the educational achievement of looked after children and an associated power to transmit data relating to individual children in monitoring this;
  - to place on local authorities a new duty, before determining what (if any) services to provide under section 17 of the Children Act 1989 for a particular child in need, to ascertain the child's wishes and feelings regarding the provision of those services, and give due consideration to them;
  - to allow for the payment of fees to adoption review panel members;
  - to allow grants to be paid across the range of children, young people and families services;
  - to remove the power to make a care order at a lower threshold than would be usual under the Children Act 1989 as a sanction for not complying with a Child Safety Order;
  - to give the Children's Commissioner for Wales the power to enter premises, other than private homes, to interview children when reviewing and monitoring the functions of and arrangements made by the Assembly and other specified persons.

### **Children and Adoption Act 2006**

- 1.5 Part 1 of the Children and Adoption Act 2006 includes provision to reform the courts' existing power to make family assistance orders and imposes a duty on the Children and Family Court Advisory and Support Service (CAFCASS)

and Welsh family proceedings officers to carry out risk assessments where they suspect a child is at risk of harm.

- 1.6 Part 2 of the Act makes provision for the Secretary of State to suspend intercountry adoptions from a country if he has concerns about the practices there in connection with the adoption of children. It also makes other provision for the following other matters relating to intercountry adoption:
- providing a power for the Secretary of State and the National Assembly for Wales to charge a fee to adopters or prospective adopters for services provided in relation to intercountry adoptions;
  - preventing an overlap of functions by local authorities where a child is brought into the country for the purposes of intercountry adoption; and
  - amends section 83 of the Adoption and Children Act 2002 to make it harder for intercountry adopters to circumvent restrictions on bringing children into the UK.
- 1.7 Part 3 of the Act makes a number of miscellaneous and final provisions, including provision about the operation of orders and regulations made under the Act, and provision relating to commencement and extent.

### **Children and Young Persons Act 2008**

- 1.8 The Children and Young Persons Act 2008 is intended to reform the statutory framework for the care system in England and Wales, and to make provisions in relation to the well-being of children and young people, private fostering, child death notification to Local Safeguarding Children Boards and appropriate national authorities.
- 1.9 The Act is in 5 parts. Part 1 (sections 1 to 6) deals with arrangements for the provision of social work services for children and young persons.
- 1.10 Parts 2 and 3 of the Act amend the public law framework for safeguarding and promoting children's welfare; that is, the services to be provided to support children and their families and the procedures to protect children

who are at risk of suffering harm. The Children Act 1989 is central to this public law framework and has been amended by the Act.

- 1.11 Part 2 (sections 7 to 33) of the Act places a new duty on the Secretary of State to promote the well-being of children in England. It sets out the duties of local authorities when providing accommodation for children they look after; places a new general duty on local authorities to secure sufficient accommodation in their area for children they look after; and makes provisions for the appointment and functions of Independent Reviewing Officers (IROs) and provides a power for the establishment of a national IRO service in England and Wales respectively.
- 1.12 It provides for the local authority to make arrangements for visits by a representative of theirs to all looked after children and for other children and young persons living away from home; and for the appointment of independent visitors to advise, befriend and support looked after children. It also provides for visits by a local authority representative to children who are provided with accommodation under health or education legislation. It extends the powers of local authorities to make cash payments to children in need and their families [see also paragraphs 1.3.6 to 1.3.7]; and places a new duty on local authorities to include, as part of the services they provide for children and their families, the provision of breaks for those who care for disabled children and for services to support family contact with children provided with accommodation under health or education legislation.
- 1.13 It imposes a duty on governing bodies of maintained schools to designate a member of staff for looked after children; and on local authorities to pay a bursary to former relevant children who go on to Higher Education. It also extends the entitlements of former relevant children to the appointment of a personal adviser and other assistance in connection with education or training. This will be further strengthened under the Children and Social Work Bill [see paragraph 1.24].

- 1.14 It amends the Care Standards Act 2000 to make provision for the enforcement of care standards in children's homes and other settings. It requires registrars to provide information to LSCBs regarding child deaths and gives a power to the Registrar General to provide information about child deaths to the appropriate national authority for research purposes. It extends the powers of the Secretary of State to carry out research on the functions of local authorities and removes restrictions on the court's powers to hear an application to discharge an Emergency Protection Order.

### **Children, Schools and Families Act 2010**

- 1.15 The Children, Schools and Families Act 2010 made provision empowering LSCBs to require safeguarding information to be provided to them with the aim of removing some of the difficulties faced by boards in securing the co-operation of external agencies in their review work. The Act also amended the law relating to special educational needs in England. In particular, it created new rights for parents to appeal to tribunal where a local authority has refused to amend a statement following a statutory review.

### **Children and Families Act 2014**

- 1.16 The Children and Families Act 2014 seeks to reform legislation relating to the following areas:
- adoption and contact (Part 1)
  - family justice (Part 2)
  - children and young people with special educational needs or disabilities (Part 3)
  - childcare (Part 4)
  - welfare of children (Part 5)
  - the Office of the Children's Commissioner for England (Part 6)
  - statutory rights to leave and pay (Part 7)
  - time off work for ante-natal care (Part 8)
  - the right to request flexible working (Part 9)

- 1.17 The Act takes forward a range of Government commitments which are intended to improve services for key groups of vulnerable children (children in the adoption and care systems, those affected by decisions of the family courts and those with special educational needs) and to support families in balancing home and work life, particularly when children are very young.
- 1.18 The Work and Families Act (Northern Ireland) 2015, which received Royal Assent on 8 January 2015, replicates for the north of Ireland the provisions contained in Parts 7, 8 and 9 of the Children and Families Act 2014.
- 1.19 Part 1 of the Act contains provisions concerning adoption and contact. This gives effect to proposals in *An Action Plan for Adoption: Tackling Delay* published by the Department for Education on 14 March 2012 and *Further Action on Adoption*, published on 24 January 2013. These set out proposals to speed up the adoption process and enable more children to be placed in stable, loving homes with less delay and disruption. The Act includes provisions which:
- are intended to encourage local authorities to place children for whom adoption is an option with their potential permanent carers more swiftly, by requiring a local authority looking after a child for whom adoption is an option to consider placing them in a 'Fostering for Adoption' placement if one is available [see paragraphs 2.4.1 to 2.4.8];
  - are intended to reduce delay by removing the explicit legal wording around a child's ethnicity so that black and minority ethnic children are not left waiting in care longer than necessary because local authorities are seeking a perfect or partial ethnic match;
  - enable the Secretary of State to require local authorities to commission adopter recruitment services from one or more other adoption agencies;
  - are intended to give prospective adopters a more active role in identifying possible matches with children, by amending the current restrictions in relation to "public inspection or search" of the Adoption and Children Act Register so that they can access the register directly, subject to appropriate safeguards [see paragraphs 2.6.1 to 2.6.4];

- are intended to improve the current provision of adoption support by placing new duties on local authorities to provide personal budgets upon request and to give prospective adopters and adoptive parents information about the support that they may be entitled to receive [see paragraphs 2.1.1 to 2.1.7];
- make changes to the arrangements for contact between children in care and their birth parents, guardians and certain others and adopted children and their birth families, former guardians and certain others with the aim of reducing the disruption that inappropriate contact can cause to adoptive placements [see paragraphs 1.3.10 to 1.3.18];
- recognises descendants of adopted people as having a prescribed relationship under section 98 of the Adoption and Children Act 2002. It provides a regulation making power to extend access to intermediary services to those who have a prescribed relationship with the adopted person [see paragraphs 2.3.1 to 2.3.4];
- amends section 22 of the Children Act 1989 to require local authorities in England to appoint an officer for the purpose of discharging the authority's duty to promote the educational achievement of the children they look after.

### **Social Services & Well-being (Wales) Act 2014**

1.20 The Social Services and Well-Being (Wales) Act 2014 reforms the law governing adult and children's social care in Wales, bringing together in a single Act all legislation about how social care in Wales is to be provided. Its aim is to improve the well-being of people who need care and support, and carers who need support. The Act changes the way people's needs are assessed and the way services are delivered, meaning that people will have more of a say in the care and support they receive.

1.21 Part 6 of the Act prescribes for the safeguarding and promotion of the well-being of looked after and accommodated children and care leavers. Key provisions include:

- ensuring that there is effective care and support planning, which embraces all aspects of the child’s wellbeing, including health and developmental needs, stability and permanence, and educational attainment;
- the provision of a range of placements, including foster care and residential accommodation;
- the effective review of each child’s case and preparation for the child or young person to leave the local authority’s care, either to be reunited with their family or to move on to independent adult living; and
- the introduction of a new duty upon local authorities to provide information about, facilitate and support post-18 living arrangements for young people in foster care. This new duty is being taken forward under the ‘When I am Ready’ scheme, which is being rolled out across Wales during 2015-16.

1.22 Part 7 of the Act deals with safeguarding both for adults and children, although safeguarding obligations are a theme that runs through the entire Act. The Act creates a National Independent Safeguarding Board (section 132) and provides, in regulations, for local Safeguarding Boards for adults and for children, whose objectives are essentially to ‘protect and to prevent’.

### **Children and Social Work Bill**

1.23 The Children and Social Work Bill was introduced into the House of Lords on 19 May 2016. The purpose of the Bill is to:

- Improve decision making and support for looked after and previously looked after children in England and Wales.
- Enable better learning about effective approaches to child protection and the wider provision of children’s social care in England.
- Enable the establishment of a new regulatory regime specifically for the social work profession in England.

1.24 Chapter 1 of Part 1 of the Bill relates to looked after children and includes provision which:

- Introduces seven corporate parenting principles to which local authorities in England must have regard whenever they exercise a function in relation to looked after children, relevant children and former relevant children [see paragraphs 2.9.1 to 2.9.5].
- Introduces the ‘local care offer for care leavers’, requiring local authorities in England to publish information about the services which it offers to care leavers as a result of its duties under the Children Act 1989 and other services it offers to everyone, which may assist care leavers in or in preparing for adulthood and independent living. The Bill specifies certain service and support areas, including: health and well-being; education and training; employment; accommodation; and participation in society.
- Introduces duties on a local authority where a former relevant child requests advice and support, regardless of whether the child intends to pursue a course of education and training. The local authority must appoint a personal adviser for the child if he or she asks for one, until he or she reaches the age of 25 or informs the local authority that a personal adviser is no longer required. The authority must also carry out an assessment of the young person’s needs and prepare a pathway plan for them, setting out the advice and support that the local authority intends to provide. The responsible local authority also has a duty to provide the former relevant child with any advice and support which the assessment identified as appropriate. The local authority must take steps to make a former relevant child aware of the right to make such a request.
- Places a duty on local authorities and schools to promote educational achievement for adopted children and those in the long-term care of family members or guardians.
- Extends the definition of ‘permanence provisions’ as it appears in the Children Act 1989 so, in addition to considering the matters currently included in section 31(3B) of that Act, the courts will also be required to consider provisions in the plan that set out the impact on the child concerned of any harm they have suffered or are likely to have suffered; their current and future needs (including needs arising from that impact);

and the way in which the long term plan for the child's upbringing would meet all of those current and future needs.

- Amends the Adoption and Children Act 2002 to require courts and adoption agencies (in England), when coming to a decision relating to the adoption of a child, to always consider that child's relationship with their prospective adopters, if the child has been placed with those prospective adopters.

1.25 Chapter 2 of Part 1 introduces other provision relating to children, including better protection of children by ensuring that lessons are learned from serious child safeguarding cases. The Secretary of State will be required to establish a Child Safeguarding Practice Review Panel. The Bill sets out the functions of the Panel, events to be notified to the Panel, and the requirement on persons or bodies to supply information to the Panel on request.

1.26 Part 2 of the Bill relates to social workers in England and introduces a specialist regulator for social work, to enable a clear focus on standards and effective training and development.

## Chapter 2

### Section 2 - Legislative amendments in Scotland

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#### **The Adoption and Children (Scotland) Act 2007**

- 2.1 The Adoption and Children (Scotland) Act 2007 modernises the adoption system and ensures more children and young people enjoy a stable home life. The Act introduced new permanence orders and allowed for both partners in an unmarried couple to adopt jointly.
- 2.2 The Act repealed and replaced the Adoption (Scotland) Act 1978, save for Part IV, and amended the Children (Scotland) Act 1995.
- 2.3 The Act maintained existing adoption services and local authorities continued to have a duty to provide adoption services. Provisions were made to ensure that people have a broad range of support services, were able to access support services and were clear about what services they would be provided with. Existing provision for intercountry overseas adoption remained but new restrictions on bringing children into the country in certain circumstances were introduced.
- 2.4 Under the Adoption and Children (Scotland) Act 2007:
- Unmarried couples are able to adopt jointly.
  - Local authorities have a duty to provide a range of adoption services.
  - People directly affected by adoption have a right to pre-adoption services, and post-adoption services.
  - The provision of support services are a clearly stated part of the adoption process so that people know what services are available to them.
  - A permanence order has been introduced for children who cannot live with their families.

## **Children and Young People (Scotland) Act 2014**

2.5 The Children and Young People (Scotland) Act 2014 aims to put children and young people at the heart of planning and services and ensuring their rights are respected across the public sector by creating new laws to provide greater support for children and families. Provisions include:

- From April 2015, teenagers in residential, foster or kinship care who turn 16 gained new rights to remain 'looked-after' up to the age of 21, as well as extended entitlement to aftercare up to their 26th birthday, if they request it.
- New duties placed on Ministers and the wider public sector to promote children's rights, as well increased powers given to Scotland's Children's Commissioner.
- Additional support to be given to kinship carers in relation to their parenting role through the kinship care order [see paragraphs 2.8.1 to 2.8.11] and families in distress to be provided with access to appropriate family counselling.
- Scotland's National Adoption Register placed in statute, improving prospects for finding homes for vulnerable young children.
- Counseling and other support provided for vulnerable children and their families.
- Improved provision of advice and help when needed for children and families from early years to adulthood, including providing a 'named person' for each child – usually their health visitor or head/senior teacher – available as a single point of contact.

## Annex

### Section 3 – The south of Ireland

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#### **The Adoption Act 2010**

- 3.1 The commencement of the Adoption Act 2010 coincided with Ireland's formal ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Adoption Act 2010 provided for the dissolution of An Bord Uchtála and the establishment of Údarás Uchtála na hÉireann (the Adoption Authority of Ireland). Its role is to provide for matters relating to the adoption of children; to give the force of law to the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption signed at the Hague on 29 May 1993; to provide for the making and recognition of intercountry adoptions in accordance with bilateral agreements and with other arrangements; and to provide for the recognition of certain adoptions effected outside the State.
- 3.2 The purpose of the Adoption Act 2010 was to improve standards in both domestic and intercountry adoption. The regulatory framework governing adoption was strengthened in an attempt to ensure that the best interests of children are protected at every step throughout the adoption process. With effect from 1 November 2010, inter-country adoptions can be effected with other countries which have ratified the Hague Convention or with which Ireland has a bilateral agreement. It repealed the Adoption Acts 1952 to 1998 and made consequential amendments to other Acts.

#### **The Child and Family Agency Act 2013**

- 3.3 The Child and Family Agency Act 2013 provided for the establishment of the Child and Family Agency. The Agency commenced operation with effect from 1 January 2014. It assumed responsibility for functions previously performed by the Health Service Executive relating to child welfare and protection. The Act also provided for the transfer of the responsibilities of the

Family Support Agency and the National Educational Welfare Board to the Agency, facilitating the greater integration of services for children and families.

### **Child Care (Amendment) Act 2015**

3.4 The main purpose of the Child Care (Amendment) Act 2015 is to strengthen the legislative provisions for aftercare by amending the Child Care Act 1991 to place a statutory duty on the Child and Family Agency (Túsla) to prepare an aftercare plan for an eligible child or eligible young person.

3.5 The Act defines an eligible child as a child aged 16 years or over who:

- is in the care of the Child and Family Agency and has been in the care of the Agency for a period of not less than 12 months since attaining the age of 13 years; or
- was in the care of the Child and Family Agency for a period of not less than 12 months since attaining the age of 13 years but is no longer in the care of the Agency.

The Act also defines an eligible adult as a person aged 18, 19 or 20 years who was in the care of the Child and Family Agency for a period of not less than 12 months in the 5 year period immediately prior to the person attaining the age of 18 years.

### **Children and Family Relationships Act 2015**

3.6 The purpose of the Children and Family Relationships Act 2015 is to reform and update family law to address the needs of children living in diverse family types.

3.7 The Act amends the Guardianship of Infants Act 1964 to provide for children living with cohabiting parents or civil partners or with a parent and a step-parent, civil partner or the parent's cohabiting partner. It also provides for children living with another relative or with a person other than a parent. The Act requires the child's best interests to be the paramount consideration in any decisions on guardianship, custody and access. In all cases, the views

of the child must be taken into account if the child is in a position to express views.

- 3.8 The Act amends the Adoption Act 2010 to extend its provisions to civil partners and cohabiting couples. Civil partners and cohabiting couples, where the latter have lived together for three years, will have the right to apply jointly to adopt a child. It provides for such couples to be subject to the same assessment processes and eligibility criteria as for married couples. It also makes provisions for a civil partnered or a same-sex cohabiting couple to place a child for adoption where that child is the child of both of them. The Act provides for civil partners and cohabiting couples to be eligible for adoption leave.
- 3.9 The Act also provides for a man or woman to be the second parent of a donor-conceived child born to the woman or man's spouse, civil partner or cohabiting partner. It provides for consequential legislative amendments, including to the Civil Registration Act 2004, to allow for a second female parent to be recorded as a child's parent.

### **Adoption (Information and Tracing) Bill 2015**

- 3.10 The main purpose of the Adoption (Information and Tracing) Bill is to facilitate access to adoption information for adopted people, birth parents and others. It will operate on the basis of a presumption in favour of disclosing information in so far as is legally and constitutionally possible. The Bill provides for the establishment of a proactive Adoption Information Register which will be the gateway into the proactive Information and Tracing Service for the purpose of facilitating information sharing and contact between adopted persons, birth parents and relatives.
- 3.11 The Bill amends section 58 of the Adoption Act 2010 to allow the natural parent or relative to either agree with the Adoption Authority of Ireland or the adopters to facilitate ongoing access, or by allowing the natural parent to apply to court.

## **The Adoption (Amendment) Bill 2016**

3.12 This Bill was published on 5th May 2016 and is currently being progressed through the Houses of the Oireachtas. The main purpose of the Bill is to amend the Adoption Act 2010 to provide for:

- sole step-parent adoption,
- the voluntary placement for adoption and adoption of a child of married parents, and
- the dispensing with parental consent to adoption in circumstances where the High Court is satisfied that the parents of a child have failed in their duty towards that child for a continuous period of 36 months or more and where it is considered likely that such failure will continue, and where adoption is considered to be in the best interest of the child.

3.13 The Bill also proposes to bring forward the relevant sections (amended as required) from Part 11 of the Children and Family Relationships Act 2015 to ensure that provisions allowing for the adoption of a child by civil partners or cohabiting couples are encompassed in primary adoption legislation, that is, the Adoption Act 2010.