

These notes refer to the Adoption and Children Act (Northern Ireland) 2022 (c.18) which received Royal Assent on 27 April 2022

Adoption and Children Act (Northern Ireland) 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Miscellaneous and Supplementary

Section 144: Northern Ireland Adoption and Children Act Register

Subsection (1) places a duty on the Department to establish and maintain a register, to be called the Northern Ireland Adoption and Children Act Register, containing details of children who are suitable for adoption, children for whom an adoption authority is considering adoption and prospective adopters who are suitable to adopt a child. Regulations will provide what information will be held about the children who are suitable, or being considered, for adoption and prospective adopters. It will also contain additional prescribed information about such persons in respect of events occurring to them after their inclusion in the register (*subsection (1)(b)*). This provision may be used, for example, to enable the register to record information about the stability of adoptive placements.

Subsection (2) enables the Department to make regulations in order for the register to contain prescribed information about children an adoption agency in Great Britain is satisfied are suitable for adoption, prescribed information about prospective adopters who a Great Britain adoption agency is satisfied are suitable to adopt a child, and additional prescribed information about such persons in respect of events occurring to them after their inclusion in the register.

Subsection (3) enables the regulations to apply any of the provisions in sections 145 to 151, with or without modification, for the purpose of giving assistance in finding persons with whom children may be placed for purposes other than adoption. This provision may be used to extend the remit of the system to cover children needing other types of placements.

The Register will not be open to public inspection or search and regulations will make provision about retention of information. Information will be kept in the Register in any form the Department considers appropriate, but is most likely to be held electronically (*subsections (4) to (6)*).

Section 145: Use of an organisation to establish the register

Section 145 deals with arrangements for the discharge of any of the functions under section 144. *Subsection (1)* enables the Department to discharge the function of establishing and maintaining the Register by making arrangements with an organisation, defined by section 151(1) as including a public body and a private or voluntary organisation, to do so. It also enables that organisation to disclose information entered in, or compiled from information entered in, the Register on behalf of the Department.

Where the Department enters into an arrangement with an organisation under subsection (1), it may issue directions in respect of the way in which the organisation operates the Register (*subsection (3)*). *Subsection (2)* enables the Department to make payments to the organisation in respect of this arrangement. *Subsection (4)* provides that, where the Department discharges the function under subsection (1) by making arrangements with an organisation, the references to the registration organisation are to that organisation.

Section 146: Use of an organisation as an agency for payments

Section 146 provides that regulations may authorise an organisation maintaining the Register on behalf of the Department to act as an agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies. This may require adoption agencies to pay or receive such sums through the organisation. The Department may issue directions in respect of the way in which the organisation is to perform the functions under this section (*subsection (2)*).

Section 147: Supply of information for the register

Section 147 deals with the supply of information to the Department or the registration organisation for entry in the Register. Regulations will set out the type of information which must be passed by adoption agencies to the Department or the registration organisation for inclusion in the Register (*subsection (1)*), and the prescribed form and manner in which that information must be given (*subsection (2)*). *Subsection (3)* provides that regulations will make provision enabling adoption agencies to enter prescribed information in the register and regulations will prescribe the form and manner in which this information is to be entered (*subsection (4)*). *Subsection (5)* provides that the regulations may require adoption agencies to pay a fee to the Department or the registration organisation in respect of information to be entered on the Register. Such a fee would contribute towards the administrative costs of placing information on the Register and would not include any element of profit. *Subsection (6)* clarifies that these requirements are subject to the parties to whom the information relates consenting to inclusion of the information on the Register. Where the information relates to a child, the regulations will set out who may consent to the sharing of the information on the child's behalf.

Section 148: Disclosure of information

Section 148 provides that information entered in the Register may only be disclosed by the Department or the registration organisation in accordance with *subsections (2), (3) or (4)*, section 149 or section 150. Under *subsection (6)* any information may be released from the Register with the authority of the Department.

Under *subsection (2)*, prescribed information held on the Register may be disclosed by the Department or the registration organisation either to an adoption agency which is looking for suitable adoptive parents with whom to place a child, or to an adoption agency acting on behalf of approved adoptive parents who wish to adopt a child. Under *subsection (5)*, regulations will set out the steps which adoption agencies must take upon receipt of this information.

Subsection (3) provides that regulations may make provision permitting the disclosure of information entered in the register, or compiled from information entered in the register to an adoption agency or a GB adoption agency for any prescribed purpose, or for the purpose of enabling the information to be entered in a register which is maintained in GB and which contains information about children who are suitable for adoption or prospective adopters who are suitable to adopt a child. *Subsection (4)* enables information either held on the Register or compiled from information held on the Register to be disclosed to prescribed categories of persons for statistical or research purposes or other prescribed purposes. *Subsection (8)* enables fees to be charged in respect of information given to adoption agencies under *subsections (2) and (3)* or in respect of information given to prescribed categories of persons for statistical or research purposes, or other prescribed purposes, under *subsection (4)*. Disclosure of information otherwise than in accordance with the provisions set out in this section is an offence, punishable on summary conviction by up to three months' imprisonment or a fine not exceeding level 5 on the standard scale, or both.

Section 149: Search and inspection of the register by prospective adopters

Section 149 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. A prospective adopter is suitable to adopt a child if an adoption agency is satisfied that they are suitable to have a child placed with them for adoption (section 151(2)(b)). The regulations may restrict access to certain parts of the register only, or only to specified content on the register (*subsection (2)*) and the regulations may also set out terms and conditions of access to the register (*subsection (3)*). *Subsection (4)* provides that regulations may prescribe the steps that prospective adopters must follow in relation to the information they have received through their search of the register. *Subsection (5)* provides that the regulations may prescribe the payment of a fee to the Department or the registration organisation by the prospective adopters for the searching or inspecting of the register.

Section 150: Search and inspection of the register by adoption agencies

Subsection (1) provides for regulations to allow for the search and inspection of the register by adoption agencies where the adoption agency is acting on behalf of a child who is suitable for adoption, to assist the agency in finding prospective adopters with whom it would be appropriate for the child to be placed, and where an adoption agency is acting on behalf of prospective adopters who are suitable to adopt a child, to assist the agency in finding a child appropriate for adoption by them. The regulations may restrict access to certain parts of the register only, or only to specified content on the register (*subsection (2)*) and the regulations may also set out terms and conditions of access to the register (*subsection (3)*). *Subsection (4)* provides that regulations may prescribe the steps that adoption agencies must follow in relation to the information they have received through their search of the register. *Subsection (5)* provides that the regulations may prescribe the payment of a fee to the Department or the registration organisation by adoption agencies for the searching or inspecting of the register.

Section 151: Supplementary

Section 151 provides general interpretation in respect of provisions in sections 144 to 150. *Subsection (4)* clarifies that nothing authorised or required to be done by virtue of sections 144 to 150 constitutes an offence under sections 97, 98 or 99.

Section 152: Time limit within which proceedings may be brought

Section 152 sets out when summary proceedings for offences may be brought and the period after which an offence cannot be brought. This section applies to offences in sections 9, 58, 97, 98, 99 or 148.

Section 153: Research and investigations

Section 153 provides that the Department may conduct, promote or assist (by grants or otherwise) any person conducting research or investigations into any matter connected with the functions of Part 1 of this Act of an adoption authority or the Department.

Section 154: Amendments, transitional and transitory provisions, savings and repeals

Subsection (1) makes provision for Schedule 3 which contains minor and consequential amendments. *Subsection (2)* provides for transitional and transitory provisions and savings to have effect under Schedule 4. *Subsection (5)* provides for the statutory provisions set out in Schedule 5 to be repealed.

Section 155: Regulations and orders

Subsection (1) provides that all regulations, other than those to which *subsection (2)* applies, are to be subject to the negative resolution procedure. Those to which *subsection (2)* applies are subject to the draft affirmative

resolution procedure (*subsection (3)*) and these are listed in subsection (2). *Subsection (4)* lists the orders that must be subject to the draft affirmative resolution procedure and *subsection (5)* provides that an order under section 157, other than an order which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation, is subject to negative resolution. *Subsection (6)* enables regulations and orders to contain ancillary provision.

Section 156: Rules of court

Section 156 enables rules of court to be made to deal generally with all matters of procedure. Under this section, “rules of court” includes family proceedings rules and county court rules as well as rules as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954. Family proceedings rules cited in *subsection (1)* has the same meaning given in Article 12(5) of the Family Law (Northern Ireland) Order 1993 (*subsection (2)*).

Section 156 provides in particular for rules to say where and to whom notice is given of hearings for placement and adoption orders. *Subsection (3)* provides that this notice must state the date and place of the application and the person to whom notice is given need not attend the hearing, unless they wish to attend or the court requires it. *Subsection (4)* makes provision as to whom that notice must be given. For applications for placement and adoption orders this is every person who can be found whose consent is necessary or could be dispensed with under section 18 or 44. In these cases rules may prescribe that where such a person cannot be found another relative must be given such notice. For applications to vary or revoke a placement order, notice should be given to each party whose consent to the placement order was necessary (or would have been required but for the dispensation provisions). For applications for an adoption order where advance consent has been given, notice should be given to each parent or guardian unless they have stated that they do not wish to be provided with such notice. *Subsection (5)* defines a relative. Rules of the court may, for the purposes of the law relating to contempt of court, authorise the publication, in such circumstances as may be specified, of information relating to be proceedings held in private involving children (*subsection (6)*).

Section 157: Supplementary and consequential provision

Section 157 provides that the Department of Health, Department of Finance and the Department of Justice may by order make any supplementary, incidental or consequential provision, or any transitory, transitional or saving provision that that Department considers is necessary or expedient to give effect to the purposes of this Act (*subsections (1) and (2)*). An order made under this section may amend, repeal or modify any statutory provision (*subsection (3)*).

Section 158: Review

Subsection (1) of section 158 places a duty on the Department to, at least once every three years, prepare and publish a report on implementation of each of the provisions in *Parts 1* and *2* of the Act and to lay a copy of the report before

the Assembly. *Subsection (2)* provides that the first report must be prepared and published within 3 years of the date on which the Act is passed. *Subsections (3) and (4)* provide that the duty to report will cease to have effect on the tenth anniversary of the date on which the Act is passed, but only if all of the provisions in Parts 1 and 2 have been commenced and included in a report

Section 159: Interpretation

Subsection (1) provides general interpretation. *Subsection (2)* provides that any power conferred to prescribe a fee by regulations includes power to prescribe a fee not exceeding a prescribed amount, a fee calculated in accordance with the regulations and a fee determined by the person to whom it is payable, being a fee of a reasonable amount. *Subsection (3)* provides a definition of “couple” for the purposes of this Act, to include a married couple, two persons who are civil partners of each other or two persons (whether of different sexes or the same sex), living as partners in an enduring family relationship. The latter does not include two people where one person is the other’s parent, grandparent, sister, brother, aunt or uncle (*subsection (4)*). *Subsection (5)* provides that the relationships set out in subsection (4) include relationships of the full blood or half blood and also include the relationship of an adoptive parent with their adopted child, or their former adopted child, but do not include any other adoptive relationships. *Subsection (6)* provides that for the purposes of this Act, a person is the partner of a child’s parent if the person and the parent are a couple but the person is not the child’s parent.

Section 160: Commencement

Section 160 provides that sections 155, 157, 159 and 161 will come into operation on the day after this Act receives Royal Assent. The remainder of the sections will come into operation on a day or days appointed by order made by the Department of Health.

Section 161: Short title

Section 161 states that the Act may be cited as the Adoption and Children Act (Northern Ireland) 2022.