

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

BACKGROUND AND POLICY OBJECTIVES

3. The need for adoption legislative reform in Northern Ireland was highlighted in the consultation of the Department of Health's draft strategy document, *Adopting the Future*, in 2006. The development of the strategy was driven principally by significant changes to the wider legislative and social contexts which govern the delivery of children's services. The strategy set out a number of proposals linked to the reform of adoption and children's legislation in Northern Ireland. The Act 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 Act. In the period following the *Adopting the Future* consultation, there has been further change to Children's, Family and Adoption law in Great Britain, and these were considered in the development of the Act.
4. The purpose of this Act is to reform adoption law in Northern Ireland, to implement the proposals in the *Adopting the Future* strategy that require primary legislation, and to make amendments to the Children (Northern Ireland) Order 1995 ("the Children Order") to improve outcomes for looked after children and young people and young people who have left care.
5. In summary, the Act:
 - aligns adoption law with the relevant provisions of the Children Order to ensure that the child's welfare is the paramount consideration in decisions relating to adoption;
 - places a duty on adoption authorities to maintain an adoption service, which must include arrangements for the adoption of children and for the provision of adoption support services (including financial support);
 - provides a new right for adopted children and adoptive parents to request an assessment of their needs for adoption support services;
 - places a duty on adoption authorities to provide adoption support services which have been assessed as needed;

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- enables the Department of Health to establish an independent review mechanism in relation to the assessment of prospective adopters;
 - makes provision for the process of adoption and the conditions for the making of adoption orders, including new measures for placement for adoption with consent and placement orders to replace the existing provisions in the Adoption (Northern Ireland) Order 1987 for freeing orders;
 - introduces a new legal framework for disclosure of information and establishing contact;
 - incorporates the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001, other than sections 1 and 2 and Schedule 1;
 - provides additional restrictions on bringing a child into the United Kingdom in connection with adoption, aimed at ensuring that British residents follow the appropriate procedures where they adopt a child overseas or bring a child into the United Kingdom for the purposes of adoption;
 - provides for restrictions on arranging adoptions and advertising children for adoption (through traditional media and electronically) other than through adoption agencies, and prohibits certain payments in connection with adoption;
 - makes provision enabling the Department to establish a Northern Ireland Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters;
 - makes provision obliging courts to draw up timetables for resolving adoption cases without delay.
6. The Act will also extend and strengthen provision in the Children Order to enhance the services provided to children, their parents and carers and to improve outcomes for looked after children. The Act will amend 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 (a Residence Order stipulating the person with whom a child should live);
 - provide that Residence Orders made in respect of looked after children will be automatically granted to age 18 or extended to age 18 unless a court determines otherwise;
 - require an authority to ascertain the wishes and feelings of a child in need in relation to suitable services which they are under a duty to provide, or investigations that they are required to carry out for

child protection purposes, and to give those wishes and feelings due consideration;

- place the existing system of care planning on a statutory basis by requiring the preparation and submission of a care plan by an authority prior to a care order being made by the court;
- introduce a special guardianship order, a new legal order intended to provide greater permanence for children who cannot return to their birth families and for whom adoption is not appropriate;
- introduce a power to make regulations to require Trusts to impose time limits on the making of representations (including complaints) about services provided under the Children Order. The complaints procedure which already applies to services provided under Part 4 (Support for children and their families) of the Children Order will also be extended to include the care, supervision and protection of children, and also to adoption and special guardianship services;
- introduce statutory 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 an authorities functions to children under the Children Order or in connection with adoption functions;
- change the name of the Guardian ad Litem to Children’s Court Guardian (CCG);
- enable Children’s Court Guardians to be directly employed (rather than admitted to a panel, as is currently the case) and appointed by the courts to represent children in family law proceedings;
- extend the proceedings in which a Children’s Court Guardian will be required to be appointed, to include applications for the making or revocation of an adoption placement order; and applications for the making of a special guardianship order with respect to a child who is the subject of a care order;
- introduce a power for authorities to provide accommodation to a disabled child, for the purposes of providing short-term breaks outside the looked after children system. The new provision also contains a power for the Department to prescribe, by way of regulations, other categories of children to whom such accommodation may be provided, again, outside of the looked after children system;
- remove the restriction on the making of cash payments to children and families in need in exceptional circumstances only;
- introduce a new requirement for authorities, as part of the duty to safeguard and promote the welfare of a looked after child, to promote, facilitate and support the child’s learning and development,

and achievement in relation to education or training. They will also be required, in providing a child with accommodation, to secure, so far as is reasonably practicable and consistent with the child's welfare, that the child's education or training is not disrupted;

- introduce a framework of corporate parenting principles that overlay the existing responsibilities of authorities towards looked after children and those leaving care to make clear what it means for an authority as a whole to act as a good parent;
- introduce a legal duty on an authority to consider the placement of a child with dually approved carers (i.e. approved foster parents who are also approved prospective adopters) when it is considering adoption, or where the decision has been made that the child ought to be placed for adoption;
- provide that fostering panels will be placed on a statutory basis and their constitution, membership, functions etc. will be prescribed in regulations;
- introduce a power for the Department to establish a procedure for independent reviews of fostering decisions about whether a person should be approved to foster or whether a person should continue to be approved to foster. The mechanism will be comparable to the independent review mechanism for adoption decision-making;
- extend the age limit for support provided to specified care leavers who are still engaged in education and training from 24 to 25. New provision will also: provide for further assistance to specified care leavers aged between 21 and 25 to pursue a new course of education or training; create a new duty for authorities, on request, to provide specified care leavers aged between 21 and 25 with advice and support which has been assessed as appropriate; and require an authority to publish information about the services they offer to care leavers (the Local Offer);
- place the Going the Extra Mile (GEM) scheme on a statutory footing to enable care leavers to continue living with their foster parents up to age 21;
- provide that current duties on authorities relating to children who are privately fostered will be extended to include children who are proposed to be privately fostered;
- further amend the meaning of "impairment of health or development" within the definition of "Harm" in the Children Order so that it includes, for example, impairment suffered as a result of the ill-treatment of another or behaviour directed at another that falls within section 2 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (what amounts to abusive behaviour) whether or not the child who has

suffered the impairment saw or heard, or was present during that ill-treatment or behaviour;

- include Female Genital Mutilation (FGM) Protection Orders in the list of Family Proceedings in the Children Order, with the effect that a court, when dealing with an application for an FGM Protection Order, can make other orders under the Children Order regarding the welfare of the child.

Changes to the Adoption Service

7. The measures to improve adoption support included in the Act are intended to encourage more people to come forward to adopt and to help adoptive placements to succeed. The Act places a duty on adoption authorities to make arrangements for the provision of adoption support services, according to arrangements to be set out in regulations. It also provides all new adopted children and adoptive parents with a new right to request an assessment of their needs for adoption support services and places a duty on authorities to provide support services which have been assessed as needed. The assessment will link in with other Health and Social Care bodies and the Education Authority functions where the need for such services are identified, with the aim of identifying a co-ordinated package of support to help adoptions succeed.
8. To encourage more people to apply to adopt and to build confidence in the assessment process, the *Adopting the Future* strategy committed the Department to provide an independent review where prospective adopters consider an adoption panel has turned down their application unfairly. The Act includes powers enabling the Department to establish a mechanism to review adoption agency determinations. The Department will be able to appoint an independent body to review, at the prospective adopters' request, applications that adoption agencies have indicated they are minded to turn down.
9. The Act also includes measures intended to tackle delays in the adoption process. It makes express provision to enable the Department to establish a Northern Ireland Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters. The Register is intended to reduce delay both for adopters and children. The Act also includes measures requiring courts to draw up timetables for resolving adoption cases without delay, and to give directions to ensure the timetable is adhered to.
10. The Act changes the process of adoption itself and places the needs and welfare of children at the centre of the adoption process. The Act makes the welfare of the child the paramount consideration for courts and adoption agencies in all decisions relating to adoption, including in deciding whether to dispense with a birth parent's consent to adoption. It provides a welfare checklist which must be applied by the court and adoption agencies. The paramountcy test brings adoption legislation into line with the Children Order.

11. The Act establishes new legal processes for placing a child for adoption through an adoption agency. Two routes are provided: birth parents may give consent to placement or the adoption agency may secure a placement order from the court, authorising it to place a child with adopters whom they select. An adoption agency must apply for a placement order where it is satisfied that a child should be adopted but the parents do not consent to placement or have withdrawn such consent.
12. The intention is to ensure decisions about whether adoption is the right option for the child, whether the birth parents consented and, if not, whether parental consent should be dispensed with are taken earlier in the adoption process than at present, with court involvement where necessary. The system aims to provide greater certainty and stability for children by dealing as far as possible with consent to placement for adoption before they have been placed; to minimise the uncertainty for prospective adopters, who possibly face a contested court hearing at the adoption order stage; and to reduce the extent to which birth families are faced with a *fait accompli* at the final adoption hearing.
13. The Act reaffirms with amendment existing safeguards under the Adoption (Northern Ireland) Order 1987 that restrict who can lawfully arrange adoptions and advertise about adoption. This includes advertising about adoption through traditional media and electronically. It also provides restrictions on the preparation of certain reports and prohibits certain payments or rewards in connection with adoption.
14. The Act also makes new provision for the disclosure to adopted people of information held by an adoption agency in connection with their adoption, and for access to their birth records. These provisions also cover the release of adoption agency information to birth relatives and others. The Act provides for a single point of access to identifying information through adoption agencies, as the bodies best placed to provide the support and counselling needed for this sensitive task. The new regulatory framework for the disclosure of information about a person's adoption seeks to recognise the interests of all those involved. Regulations may be made under the Act providing for the exercise of discretion by adoption agencies in this area to be reviewed by an independent panel that may be established by the Department. These provisions only apply to adoptions that take place after the Act has been brought into force. For adoptions which took place prior to that, provision will be made for intermediary services to assist adopted adults and birth relatives to obtain information about an adoption and to facilitate contact between adopted adults, their birth relatives and prescribed persons who are related to an adopted person by blood, marriage or civil partnership, or by virtue of the adopted person's adoption.
15. The Act incorporates most of the provisions of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 ("the 2001 Act"), which will largely be repealed when the Act is implemented. The 2001 Act provides a statutory basis for the regulation of intercountry adoption. It enabled Northern Ireland

to ratify the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, which was concluded at The Hague on 29 May 1993 (“the Hague Convention”). Section 12 also inserts Article 58ZA into the Adoption (Northern Ireland) Order 1987, which makes it an offence to bring children into the United Kingdom without following prescribed procedures. Article 58ZA is repealed and section 82 of the Act makes comparable provision relating to restrictions on bringing children into the United Kingdom for adoption.

16. To ensure that people living in the United Kingdom wishing to adopt a child from overseas follow the appropriate approval procedure, whether they adopt the child abroad or in the United Kingdom, the Act enhances the safeguards in the 2001 Act. It incorporates the restriction in that Act on bringing a child into the United Kingdom for the purpose of adoption by a British resident, and provides a new restriction where a child is brought into the United Kingdom if he or she has been adopted by a British resident under an adoption order made under the law of a country outside the United Kingdom, the Channel Islands and the Isle of Man, which is not a Hague Convention adoption, within the previous 12 months.
17. The Act includes provisions to enable the Department to restrict adoptions from certain specified countries where there are concerns about practices in connection with the adoption of children. This aligns with current practice in England, Scotland and Wales.
18. The Department gave a commitment, following the consultation on its draft strategy, *Adopting the Future*, to introduce a new option for permanence, a special guardianship order. This is intended to meet the needs of children for whom adoption is not appropriate but who cannot return to their birth parents and could benefit from the permanence provided by a legally secure family placement. For example, some older children (who may, for instance, be being looked after in long-term foster placements) do not wish to be adopted and have their legal relationship with their parents severed, but could benefit from greater security and permanence. Adoption may also not be the best option for some children being cared for on a permanent basis by members of their wider family.
19. The Act amends the Children Order to provide for the new special guardianship order. It sets out who may apply for an order, the circumstances in which orders may be made and their nature and effect. Special guardians must be aged 18 years or over. Joint applications for special guardianship may be made and people applying jointly need not be married or in a civil partnership. The court may also make special guardianship orders in any family proceedings if it considers an order should be made. In each application the Health and Social Care Trust must assess the suitability of the applicants and prepare a report to the court. Unlike an adoption order, a special guardianship order may be varied or revoked by application, but only in limited circumstances.

20. A special guardian acquires parental responsibility for the child and may exercise it to the exclusion of others with parental responsibility, except in very exceptional circumstances. The intention is that, in order to provide the child with the stability he needs, the special guardian has clear responsibility for all the day to day decisions about caring for the child or young person and for taking the decisions about their upbringing. But, unlike adoption, the child's legal relationship with his or her birth parents is not severed. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited. They retain the right to consent, or not, to the child's placement for adoption or adoption. The Act also provides for special guardianship support services to be provided, including financial support.