

*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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 - Adoption**

##### *Chapter 2 – The Adoption Service*

Chapter 2 makes provision for the structure of the adoption service. Some of the sections re-model provisions of the Adoption (Northern Ireland) Order 1987. This Chapter also underpins some important areas of new policy dealing with adoption support services (including financial support) and independent reviews of qualifying determinations (see section 12).

##### *Section 2: Basic definitions*

This section sets out some basic definitions. *Subsection (1)* provides that the services provided under section 4(1) are to be known as "the Adoption Service" and that an adoption authority or an appropriate voluntary organisation may be referred to as an "adoption agency" (*subsection (2)*). An "appropriate voluntary organisation" is a voluntary organisation which is an adoption society in respect of which a person is registered; but in relation to the provision of any facility of the Adoption Service, references to an appropriate voluntary organisation or to an adoption agency do not include an adoption society if the registration is not in respect of that facility (*subsection (3)*). An "adoption society" is a body whose functions consist of or include making arrangements for the adoption of children. Registered means registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and registration means registration under that Order (*subsection (5)*). Registration in respect of an adoption society is treated as registered in respect of any facility of the Adoption Service for the purposes of the Act unless it is a condition of its registration that it may not provide that facility (*subsection (4)*).

*Subsection (6)* provides that adoption support services include counselling, advice and information in relation to adoption. Regulations will set out what other services are to fall within this definition. *Subsection (7)* provides that the Department must exercise the power under subsection (6)(b) to make regulations so as to secure that adoption authorities provide financial support.

*Subsection (8)* states that the references in this Chapter to adoption are to the adoption of persons wherever they may be habitually resident, effected under the law of any country or territory.

### ***Section 3: Adoption authority***

This section provides that every Health and Social Care trust (HSC trust) is the adoption authority for its own area (*subsection (1)*), but regulations may provide that, in relation to prescribed functions or services under this Act, another HSC trust may be the adoption authority in relation to that area (*subsection (2)*). This provision enables the Department to specify that one HSC trust may manage and provide prescribed adoption services on behalf of another or other HSC trusts. An HSC trust is defined in the Act as a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991, except for the Northern Ireland Ambulance Service, and references to an area of an HSC trust are to its operational area as specified under paragraph 3A of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (*subsection (3)*). *Subsection (4)* provides that regulations may amend the definition of an HSC trust in *subsection (3)*.

### ***Section 4: The Adoption Service***

Under section 4, every adoption authority must maintain within their area an adoption service designed to meet the needs, in relation to adoption, of children who may be adopted, their parents and guardians; persons wishing to adopt a child; and adopted persons, their parents, natural parents and former guardians, and for that purpose must provide the requisite facilities (*subsection (1)*). Facilities must include making, and participating in, arrangements for the adoption of children and for the provision of adoption support services (*subsection (2)*). In addition to the duty to make arrangements for the provision of adoption support services to the categories of persons listed in *subsection (1)*, *subsection (3)(a)* places a duty on the adoption authority to make arrangements for the provision of adoption support services to persons prescribed in regulations. *Subsection (3)(b)* provides that an adoption authority may also extend the provision of such services to other persons.

Adoption authorities may meet their obligation to provide the requisite facilities by ensuring that they are provided by an appropriate voluntary organisation, or in relation to the provision of adoption support services of a prescribed description, a voluntary organisation, or such other persons as may be specified in regulations (*subsection (4)*). A “voluntary organisation” is defined in section 159 as a body (other than a public body) the activities of which are not carried on for profit. *Subsection (5)* provides that facilities of the adoption service must be provided in conjunction with any other social care provided by an adoption authority, with appropriate voluntary organisations and with voluntary organisations providing facilities under *subsection 4(a)*, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.

*Subsection (6)* provides that “social care” has the meaning given by section 2(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (and, in particular, social care in so far as it relates to children).

The provisions in sections 2, 3 and 4 will be used to give effect to the new framework for adoption support services, including financial support.

### ***Section 5: Assessments etc. for adoption support services***

An adoption authority must, under section 5, carry out an assessment of the needs for adoption support services of any of the persons mentioned in section 4(1) (that is, children who may be adopted, their parents and guardians; persons wishing to adopt a child; and adopted persons, their parents, natural parents and former guardians) or any other person of a prescribed description, at that person's request.

The assessment will provide a mechanism to assist in accessing adoption support services. It is intended that the assessment will provide a means of facilitating the provision of a planned and co-ordinated support package. It will link with other HSC trusts' functions, including other health services, and services provided by the Education Authority, where the needs for such services are identified, with the aim of identifying a co-ordinated package of support to help adoptions succeed.

Regulations made under *subsection (8)(a)* may set out the circumstances in which the categories of person prescribed in the regulations made under *subsection (1)(b)* are to have a right to request and receive an assessment. An adoption authority may also carry out an assessment of the needs of any other person for adoption support services (*subsection (2)*). Adoption authorities may call upon the expertise of an appropriate voluntary organisation, a voluntary organisation, or persons prescribed in the regulations made under section 4(4) (b) to assist them in carrying out an assessment (*subsection (3)*).

Under *subsection (5)*, where a person's needs for adoption support services are identified in an assessment, the adoption authority must provide them to the following categories of persons: a child who may be adopted, a parent or guardian of a child who may be adopted, a person wishing to adopt a child, an adopted person, a parent, natural parent or former guardian of an adopted person, or a person who is within a prescribed description. In all other cases, it must decide whether to provide the services assessed as needed (*subsection (4)*). Where an adoption authority decides to provide services, or it is under a duty to do so, the adoption authority will be required, in prescribed circumstances, to prepare a plan for the provision of services and keep the plan under review (*subsection (6)*). It is intended that a plan will be required where a number of different adoption support services are being provided, in order to co-ordinate the provision of those services.

*Subsections (7) and (8)* provide a power to make provision in regulations about the carrying out of assessments, including considerations to be taken into

account during the assessment, preparing and reviewing plans, the provision of services in accordance with plans and reviewing the provision of adoption support services. These regulations will underpin the delivery of the new framework for adoption support including financial support. Regulations under subsection (8)(b) may set out the type of assessment which is to be carried out for each of the categories of person mentioned in section 4(1) and anyone else who receives an assessment for adoption support services. Regulations under subsections (8)(f) and (g) may set out the circumstances in which adoption support services may be provided subject to conditions and the consequences of failure to comply with any such conditions. It is anticipated that regulations could, for example, be used to enable an adoption authority to specify that financial support must be spent on specified items or services and that sums given may be recouped where they are not spent accordingly. This may be appropriate where a one-off grant is being paid for a specific purpose, but is unlikely to be appropriate for a regular adoption allowance. Regulations made under subsection (8)(h) may set out where the responsibility for carrying out an assessment and the provision of any adoption support services lies in cases where a child is placed with an adoptive family living in a different HSC trust area, together with funding arrangements. This is intended to ensure that it is clear which HSC trust is to provide adoption support services where a child is placed across HSC trust boundaries.

An assessment for adoption support under this provision may be carried out at the same time as an assessment of that person's needs under any other statutory provision (*subsection (9)*). This provision clarifies that an assessment for adoption support services may link with other statutory assessments of an individual's needs. If at any time during the assessment it appears to the adoption authority that the person may need services which are provided by another health and social care body or by the Education Authority, the adoption authority must notify the body or the Education Authority. *Subsections (9) and (10)* are intended to promote the joined up provision of public services in support of adoption.

*Subsections (11) and (12)* impose a duty on public bodies to co-operate in the exercise of functions under this section if it is consistent with the exercise of their functions more generally.

### ***Section 6: Adoption Support services: duty to provide information***

*Subsection (1)* places a new duty on adoption authorities to provide a range of information about adoption support services and other prescribed information to any person who has contacted the adoption authority to request information about adopting a child, or has informed the adoption authority that they wish to adopt a child. Adoption 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 subsection also makes provision for regulations to prescribe the circumstances in which an adoption authority does not need to provide the information.

*Subsection (2)* sets out the information that the adoption authority must provide, including information about the adoption support services available to people in the adoption authority's area and information about the right to request an assessment for adoption support services. It also makes provision for regulations to prescribe other information that must be provided by the adoption authority.

### ***Section 7: Arrangements on cancellation of registration***

Where a body ceases to be an appropriate voluntary organisation by virtue of the cancellation of its registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, section 7 empowers the Department to direct that organisation to make appropriate arrangements for the transfer of the organisation's functions relating to children.

### ***Section 8: Inactive or defunct adoption societies, etc.***

Section 8 empowers the Department to direct the relevant adoption authority to take action where an appropriate voluntary organisation is inactive or defunct or where a body has ceased to be an appropriate voluntary organisation by virtue of the cancellation of its registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and it has not made such arrangements for the transfer of its functions relating to children as are specified in a direction given by the Department. Before giving such a direction the Department, if practicable, should consult with both the organisation and the adoption authority. It also enables the Department to charge the organisation for the expenses necessarily incurred by it or on its behalf as a result of its failure to make appropriate arrangements.

### ***Section 9: General power to regulate adoption agencies***

Section 9 enables regulations to be made in respect of adoption agencies (i.e. adoption authorities and appropriate voluntary organisations). *Subsection (1)* provides a general power to make regulations for any purpose relating to the exercise by adoption agencies of their functions in relation to adoption. *Subsection (2)* provides that the power to make regulations under section 9 is not limited by the specific powers in sections 10 to 12, 42, 53, 55 to 64 and 102, or by any other powers exercisable in respect of adoption agencies. *Subsection (3)* enables regulations to be made under this provision to provide that a person who breaches those regulations commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### ***Section 10: Management, etc., of agencies***

Section 10 amplifies the general regulation-making power in section 9 in relation to the management and general operation of adoption agencies. *Subsection (1)* provides for regulations to be made in respect of adoption authorities and appropriate voluntary organisations to ensure that they are suitably managed and

staffed, that their premises are fit for the purpose and that adequate arrangements are made for the keeping of information.

*Subsection (2)* provides that regulations may be made under subsection (1) prohibiting a person's appointment to a prescribed post within an adoption agency unless they are registered in, or in a particular part of, the register maintained under section 3 of the Health and Personal Social Services Act (Northern Ireland) 2001.

The powers in *subsection (3)* apply only to appropriate voluntary organisations. In the case of adoption authorities, such powers are either inappropriate or unnecessary because any child placed, or authorised to be placed, for adoption by an adoption authority is to be treated as a looked after child. Regulations may be made to ensure that appropriate voluntary organisations are managed by persons who are fit to do so, and for the health and welfare of children placed by appropriate voluntary organisations to be adequately protected. Subsection (3) also provides that regulations may be made imposing requirements regarding the financial position of the organisation and the appointment of a manager.

*Subsection (4)* sets out that regulations may be made concerning the conduct of appropriate voluntary organisations, including the provision of facilities and services; the keeping of accounts; notification to the RQIA of events occurring in the organisation's premises; notification to the RQIA and making arrangements for the running of the organisation when its manager is absent, and specifying the information to be given in such a notice; changes in the person managing the organisation and changes in its ownership or the identity of its officers, and the payment of a prescribed fee in respect of any notification of change of ownership; and arrangements for dealing with complaints.

### ***Section 11: Fees***

Section 11 amplifies the powers in section 9 in relation to the charging and payment of fees. *Subsection (1)* enables the Department to make regulations providing for the fees which may be charged by adoption agencies for the provision of prescribed services to those providing facilities as part of the Adoption Service (including Adoption Services in Great Britain, the Channel Islands and the Isle of Man), and for the fees to be paid by adoption agencies to those providing services on their behalf or assisting in providing those services. This power could, for example, be used to make regulations to underpin or make changes to the “inter-agency fee” (a payment currently made by an adoption agency to another adoption agency which has recruited an adoptive family on its behalf). The power could also be used to make regulations to enable payments to persons assisting in the assessment of adopters, such as members of adoption panels.

*Subsection (2)* enables the Department to make regulations prescribing the fees which may be charged by an adoption authority in respect of prescribed facilities of the Adoption Service, provided that the conditions in *subsection (3)* are met. The conditions are that the facilities must be provided in connection with the



adoption of a child brought into the United Kingdom for the purpose of adopting the child, or in connection with a Convention adoption, an overseas adoption or an adoption effected under the law of a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man.

It is intended that any charges provided for by these regulations will contribute towards an adoption authority's costs in providing information, preparing and assessing prospective adopters, obtaining medical reports and police checks and preparing post-placement and post-adoption reports in respect of inter-country adoption cases. They will not include any element of profit.

*Subsection (4)* enables regulations to prescribe the fees which may be charged by an adoption agency in respect of the provision of counselling provided in connection with the disclosure of information in relation to a person's adoption. This means that regulations may enable adoption authorities as well as appropriate voluntary organisations to charge fees for the provision of such counselling services. It also provides for those fees to be regulated. It is intended to provide for an adoption authority or appropriate voluntary organisation to be able to charge a fee to any person, other than an adopted person, who is receiving counselling in connection with the disclosure of information about an adoption made before the Act is implemented. The fee may only be for the reasonable costs incurred by the adoption agency for the provision of the counselling.

### ***Section 12: Independent review of qualifying determinations of adoption agencies***

Section 12 amplifies the powers in section 9 in relation to the establishment of a review procedure in respect of qualifying determinations made by adoption agencies. A person in respect of whom a qualifying determination, specified in regulations, has been made may apply to a panel established by the Department for a review of the relevant determination. It is intended to use this provision to provide prospective adopters with a right to request a referral to a panel where an adoption agency indicates that it is minded to turn down their application to adopt.

It is also intended that the independent review mechanism will review qualifying determinations made by adoption agencies concerning the disclosure of protected information (defined in section 56) held by the adoption agency where, under regulations made under the Act, the adoption agency has discretion as to whether to disclose such information.

Regulations may be made under *subsection (3)* dealing with the duties and powers of a panel, administration and procedures, appointment of panel members, payment of fees, the duties of adoption agencies in connection with reviews and the monitoring of reviews.

*Subsection (4)* provides that regulations made under subsection (3)(e) may enable the Department to request a contribution towards the cost of a review from the adoption agency that made the original determination. *Subsections*

(5) and (9) provide that the sums payable to the Department must not, taking one financial year with another, exceed the costs incurred in performing the independent review functions.

*Subsection (6)* enables the Department to make an arrangement for an organisation to carry out the functions in relation to the panel on its behalf. "Organisation" is defined in *subsection (10)* as including a public body and a private or voluntary organisation. *Subsection (8)* enables the Department to make payments to such an organisation and under *subsection (7)* the organisation must perform its functions in accordance with any directions which the Department may give.

### ***Section 13: Information concerning adoption***

Section 13 requires adoption agencies to give the Department statistical or other general information relating to adoption as may be required. The information required is in respect of the agency's performance of all or any of its functions relating to adoption, and in respect of the children and other persons in relation to whom it has exercised those functions. Information must be provided at the time and in the form directed by the Department. *Subsection (3)* empowers the Department to publish abstracts of the particulars sent to it.

### ***Section 14: Inspection of premises, etc.***

Section 14 provides for a person authorised by the Department to inspect any premises where a child who has been placed by an adoption agency, or a child in respect of whom a notice of intention to adopt has been given under section 41, is or will be living. *Subsection (4)* enables a person carrying out an inspection of premises under *subsection (1)* to visit the child there and examine the state of the premises and the treatment of the child. *Subsection (2)* enables the Department to require an adoption agency to give it information and access to records (in whatever form) relating to the discharge of its functions in relation to adoption. *Subsection (5)* provides for the inspection of any computer and associated apparatus being used in connection with an adoption agency's records.

*Subsection (3)* provides that inspections under this section must be conducted by a person authorised by the Department and *subsection (6)* gives any such authorised person a right of entry to premises at any reasonable time and a right to request reasonable assistance. The authorised person must, if required, produce documentation showing their authority to carry out the inspection (*subsection (7)*). Obstructing a person authorised to inspect premises or records is an offence, punishable on summary conviction by a fine up to level 3 on the standard scale (*subsection (8)*).