

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 1 - Adoption

Chapter 3 - Placement for Adoption and Adoption Orders

Section 61: Disclosing protected information about children

Section 61 provides for the process that an appropriate adoption agency must undertake when an application for disclosure of protected information is made to it, and any of that information is about a person who is a child at the time that the application is made. This is set out in *subsection (1)*.

Subsection (2) provides that the agency is not obliged to proceed with an application for disclosure of information unless it considers that it is appropriate to do so. If the agency does proceed with the application, *subsection (3)* provides that where the information relates to a child, the agency must take all reasonable steps to obtain the views of any parent or guardian of the child as to the disclosure of the information. If the agency considers it appropriate to do so, it must also seek the child's views as to the disclosure of the information. In doing so the agency must take into account the child's age and understanding, including the ability to understand the consequences of what is being asked, and all the other facts of the case.

Where the agency decides to proceed with the application, *subsection (4)* provides that where the information relates to a person who has attained the age of 18 at the time that the application is made, the agency must take all reasonable steps to obtain their views as to the disclosure of the information.

Subsection (5) gives the agency discretion to disclose the information if it considers it appropriate to do so. This discretion must be exercised having regard to *subsections (6) and (7)*.

Subsection (6) provides that in deciding whether or not to proceed with an application for the disclosure of information, or to disclose that information, where any of the information relates to a person who at the time the application is made is an adopted child, that child's welfare must be the paramount

consideration. In the case of any other child, the agency must have particular regard to that child's welfare.

Subsection (7) provides that in deciding whether or not to proceed with an application to disclose information, or to disclose any information, the agency must consider the welfare of the adopted person (where they are not an adopted child), any views obtained under subsections (3) and (4), any prescribed matters and all the other circumstances of the case.

Under *subsection (8)* this section does not apply to a request for information under section 59(2), where a request is made by an adopted adult for either the information needed to obtain a certified copy of his or her birth record or the information given by an agency to his or her adopters under section 53. Applications by an adopted person for the disclosure of all other protected information fall within this section or section 60. Section 61 does not apply to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of section 56(6).