

*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 7 - Miscellaneous*

Chapter 7 restates, with amendment, the criminal offences in Articles 11 and 59 of the Adoption (Northern Ireland) Order 1987. These deal with restrictions on making arrangements for adoption and payments offered, made or received in consideration of an adoption. In addition, it introduces a new offence which deals with restrictions on preparing reports in connection with adoption. Chapter 7 also sets out who may prosecute offences under the Act.

In addition, Chapter 7 deals with proceedings in the civil courts. It aligns provision for appeals from the county court, with the procedure in the Children (Northern Ireland) Order 1995 and makes provision about the hearing and reporting of proceedings under the Act. New provision is made to impose an obligation on the courts when dealing with proceedings for an adoption or placement order to draw up a timetable to ensure that the matter is dealt with without delay. In addition, provision is made for the appointment of Children's Court Guardians (previously known as Guardians ad Litem). The Act gives a new right to such officers, in connection with the hearings with which they are involved, to inspect records held by an adoption agency.

This Chapter also provides for recognition in Northern Ireland of adoption orders made in England and Wales, Scotland, the Channel Islands and the Isle of Man.

##### *Section 96: Restriction on arranging adoptions etc.*

Section 96 sets out the steps in relation to arranging an adoption that must not be taken by a person who is not an adoption agency or a person acting in pursuance of an order of the High Court. *Subsection (2)* lists nine steps that should not be taken, for example seeking, offering or placing a child for adoption. *Subsections (3) and (4)* provide that certain steps do not apply where one or both of the prospective adopters are parents, relatives or guardians of the child, or where a prospective adopter is a partner of a parent. *Subsection (6)*

enables the Department to make an order amending subsections (1) to (4) where it considers an amendment necessary or expedient. This power could be used, for example, to specify additional steps for inclusion in the list in subsection (2) to further protect the interests and welfare of children or other parties affected by adoption. *Subsection (5)* allows regulations to be made prescribing who should be treated as an adoption agency in respect of intercountry adoption for the purpose of this provision.

### ***Section 97: Offence of breaching restrictions under section 96***

Section 97 provides that where a person contravenes section 96(1) they are guilty of an offence. It also provides that if the offender is an adoption society, the person who manages the society is also guilty of the offence. Defences are provided in *subsections (2) to (4)*. *Subsection (5)* sets out that the penalty on summary conviction is imprisonment for a term not exceeding six months or a fine not exceeding £10,000, or both.

### ***Section 98: Restriction on reports***

Section 98 provides restrictions on the preparation of certain reports in connection with adoption. *Subsection (1)* provides a regulation making power so that a person who is not within a prescribed description may not, in any prescribed circumstances, prepare a report for any person about the suitability of a child for adoption or of a person to adopt a child or about the adoption, or placement for adoption, of a child. The intention is to use this power to regulate the preparation of assessment, post-placement and post-adoption reports and to ensure that only suitably skilled or professionally qualified staff carry out the necessary evaluations and report writing. *Subsection (2)(a)* provides that an offence is committed if a person contravenes subsection (1). *Subsection (2)(b)* provides that an offence is committed where someone causes a person to prepare a report or submits to any person a report which has been prepared in contravention of subsection (1). *Subsection (3)* provides that where an offence is committed by a person who works for an appropriate voluntary organisation, the manager of that appropriate voluntary organisation is also guilty of the offence. A defence for a person charged with an offence under subsection (2)(b) is provided by *subsection (4)*. *Subsection (5)* sets out the penalty on summary conviction where an offence is committed as imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

### ***Section 99: Prohibition of certain payments***

Section 99 prohibits certain payments or rewards in connection with the adoption of a child. *Subsection (1)* provides that this section applies to any payment (other than an excepted payment as set out in section 100) which is made for the adoption of a child, giving any consent for the child's adoption, or the removal from the United Kingdom of a child who is a Commonwealth citizen, or is habitually resident in the United Kingdom, to a place outside the

United Kingdom, the Channel Islands or the Isle of Man for the purpose of adoption. Subsection (1) also applies to any payment in connection with certain steps taken to arrange an adoption, and the commissioning or preparation of reports where it would contravene section 98(1).

*Subsection (3)* provides that an offence is committed where a person makes any payment to which this section applies, agrees or offers to make any such payment, or receives or agrees to receive or attempts to obtain any such payment. *Subsection (4)* provides the penalty on summary conviction where an offence is committed as imprisonment for a term not exceeding six months or a fine not exceeding £10,000, or both.

### ***Section 100: Excepted payments***

Section 100 provides that payments may be excepted in certain circumstances. The intention is to allow payments to be made for reasonable expenses, such as legal and medical expenses in relation to an adoption, payments to an adoption agency for expenses incurred for arranging for the adoption of a child whose country of origin is outside the United Kingdom, or for reasonably incurred travel and accommodation expenses where a child is being taken out of the United Kingdom for the purpose of adoption as permitted by section 84(2).

*Subsection (1)* provides that a payment is an excepted payment if it is made in compliance with a provision under this Act, the Adoption and Children (Scotland) Act 2007 or the Adoption and Children Act 2002. The payment of reasonable expenses incurred in connection with an adoption, proposed or actual, to an adoption agency is excepted by *subsection (2)* if it is made by a parent or guardian of a child, or by a person who adopts or proposes to adopt a child. *Subsection (3)* provides that a payment for legal or medical expenses is an excepted payment if it is incurred by a person in respect of an application to a court for an adoption order, a placement order, or an order under section 23 (Contact), section 49 (Post-adoption contact) or section 83 (Giving parental responsibility prior to adoption abroad). *Subsection (4)* provides that a payment made where a child is removed from the United Kingdom for the purpose of adoption is an excepted payment if the condition in section 84(2) is met, and the payment is made for reasonably incurred travel and accommodation expenses.

### ***Section 101: Sections 96 to 100: interpretation***

Section 101 provides interpretation in respect of the provisions in sections 96 to 100.

### ***Section 102: Pre-commencement adoptions: information***

Section 102 amplifies the regulation-making power in section 9 to provide that the Department may make regulations in connection with adoptions made before the appointed day (i.e. before the commencement of sections 55 to 64).

*Subsection (1)* provides that regulations may make provision for assisting persons adopted before the appointed day and their natural parent(s) to obtain

information about that adoption; and for facilitating contact between them and their relatives.

*Subsection (2)* enables regulations to make provision enabling intermediary services to be provided for the purpose of facilitating contact between people with a prescribed relationship to an adopted person and the adopted person's natural relatives.

It is intended that regulations will provide for a system in which adoption agencies registered to provide intermediary services may, on application by an adult who was adopted under a pre-commencement adoption, a natural relative, or a person with a prescribed relationship to an adopted person, act as intermediaries and, with the informed consent of the adopted person, facilitate contact between the adopted person and their relatives. It is envisaged that in performing this role adoption agencies will be obliged, where an adoption agency arranged the adoption, to seek advice and information from that agency. It is also envisaged that the adoption agency is to be able to obtain information held by the Registrar General, where this is necessary in order to perform their intermediary function.

*Subsection (3)* enables regulations to make provision for the purpose of authorising or requiring adoption agencies in prescribed circumstances to disclose or provide access to prescribed information relating to pre-commencement adoptions. This will provide scope to include all provision relating to the disclosure of, and access to, pre-commencement adoption information together in one set of Regulations, rather than continuing to rely on the Adoption Agencies Regulations (Northern Ireland) 1989.

It is intended that the regulations made under *subsections (4) and (5)(a)* will set out the circumstances when adoption agencies and the Registrar General are to be able or required to disclose information to each other. For example, an adoption agency is to be authorised to disclose information to the Registrar General. The Registrar General is required to disclose tracing information to the adoption agency.

Provision is made under *subsection (5)(b)* for regulations to be made authorising or requiring the court to disclose information to an adoption agency.

*Subsection (6)* makes express provision for regulations to impose conditions on the disclosure of information under this section, including conditions restricting its further disclosure, so that identifying information is properly protected, for example to ensure that the appropriate consent is in place before any disclosure is made.

Regulations may be made under subsection (3) of section 9 for unauthorised disclosure of the information provided for by section 102 to be a criminal offence punishable on summary conviction with a maximum level 5 fine.

*Subsection (7)* provides that regulations may authorise the charging of prescribed fees for the disclosure of information by adoption agencies, the

Registrar General and the court. It also provides that an adopted person may not be required to pay any fee in respect of information disclosed to them or to which they have been granted access.

*Subsection (8)* provides that an authorisation or requirement made under subsection (3) or (5)(a), has effect, in spite of any restriction on the disclosure of information in Chapter 5 relating to the Registers. *Subsection (9)* requires the approval of the Department of Finance to the making of regulations under subsections (4) to (7) which relate to the Registrar General. *Subsection (10)* defines terminology used in this section.

### ***Section 103: Proceedings for offences***

Section 103 sets out that proceedings for offences under sections 9 and 58 are ordinarily to be brought by the Regulation and Quality Improvement Authority. Such offences can only be prosecuted by another body with the written consent of the Director of Public Prosecutions for Northern Ireland.

### ***Section 104: Appeals***

*Subsection (1)* provides that an appeal lies to the High Court against the making by a County Court of any order under this Act or any refusal by a County Court to make such an order as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 and the appeal were brought under Article 60 of that Order.

*Subsection (2)* provides that, on an appeal under subsection (1), the High Court may make such orders as necessary to give effect to its determination of the appeal. The High Court may also make such incidental or consequential orders as appear to it to be just (*subsection (3)*).

*Subsection (4)* provides that any order of the High Court made on an appeal under subsection (1) (other than one directing that an application be re-heard by the county court) is to be treated, for the purposes of the enforcement of the order and any power to vary, revive or discharge orders, as if it were an order of the County Court from which the appeal was brought and not an order of the High Court.

Subsections (1) to (4) are subject to Article 166(14) and (15) of the Children Order (*subsection (5)*).

### ***Section 105: Privacy***

Section 105 provides that rules of court may make provision for the court to sit in private in any proceedings under the Adoption and Children Act. *Subsection (3)* aligns the protection for the privacy of children concerned in proceedings under Article 170 of the Children Order and the Act.

### ***Section 106: Children’s court guardians***

*Subsection (1)* provides that for the purposes of any relevant application (defined in *subsection (5)* for the making, varying or revoking of a placement order or a contact order under section 23, or the making of an adoption order or a parental responsibility order under section 83), rules of court must provide for the appointment of a children’s court guardian in prescribed cases. *Subsection (2)* provides that rules may provide for the children’s court guardian to act on behalf of the child, to safeguard the interests of the child in a prescribed manner, prepare reports on matters relating to the child’s welfare and perform other prescribed functions. *Subsection (3)* provides that the report must include any matter prescribed by rules (unless the court orders otherwise) and must be made in the manner required by the court. *Subsection (4)* sets out who should not be appointed as a children’s court guardian under subsection (1). Rules of court may make provision as to the assistance which the court may require a children’s court guardian to give to it (*subsection (6)*).

*Subsection (8)* provides how children’s court guardians are to be appointed under this section. The Department may by regulations provide that children’s court guardians must be selected from persons employed or approved by such special agency or other public body as may be prescribed.

Subsection (8) is not to be taken to prejudice the power of the Lord Chief Justice to confer or impose duties on the Official Solicitor under section 75(2) of the Judicature (NI) Act 1978 (*subsection (9)*).

*Subsection (10)* provides that the regulations may in particular make provision for the employment or approval of persons by such special agency or other public body as may be prescribed, the qualifications for appointment as a children’s court guardian, the training to be given to children’s court guardians and for monitoring the work of children’s court guardians. A “public body” is defined in section 159 as a body established by or under any statutory provision. The Department may, with the approval of Department of Finance, make such grants as the Department considers appropriate with respect to expenditure incurred under regulations made under subsection (8) (*subsection (11)*).

### ***Section 107: Right of access to adoption agency records***

The powers of a children’s court guardian have been extended under section 107 of the Act, which creates a right at all reasonable times for a children’s court guardian appointed under section 106(1) to examine and take copies of any records of, or held by, an adoption agency relating to a proposed or actual application under Part 1 of the Act in respect of the child concerned. Any copy of such a document (or part of a document) will be admissible as evidence of any matter referred to in any evidence that the children’s court guardian may give in the proceedings or any report the children’s court guardian makes to the court in those proceedings. A children’s court guardian appointed under Article 60 of the Children Order already has the right to access records held by an authority

in connection with specified proceedings under that Order (Article 61 refers). Section 107 provides an equivalent right to access adoption agency records.

***Section 108: Evidence of consent***

Section 108 provides for a document signifying consent to be admissible in evidence without any further proof of the signature of the person who executed it when the document has been witnessed in accordance with rules of the court.

***Section 109: Effect of certain Scottish orders and provisions***

*Subsection (1)* provides that a Scottish adoption order or an interim adoption order will have the same effect in Northern Ireland as it has in Scotland. *Subsection (2)* provides that Scottish permanence orders which include provision granting authority for a child to be adopted are to have effect in Northern Ireland as they do in Scotland. *Subsection (3)* provides for it to be an offence in Northern Ireland to contravene the restrictions on removing a child who is living with prospective adopters where the adoption has been agreed or where the person applying for adoption has provided the home (the provisions in sections 20 - 22 of the Adoption and Children (Scotland) Act 2007). The penalty, set out in subsection (3), is three months' imprisonment or a fine not exceeding level 5 on the standard scale, or both.

*Subsection (5)* allows for orders made under section 24 of the Adoption and Children (Scotland) Act 2007 (return of child removed in breach of certain provisions) to have effect in Northern Ireland as if they were orders of the High Court under section 37 of this Act (recovery orders).

***Section 110: Effect of certain orders made in England and Wales***

Under section 110, an adoption order or placement order (including the variation or revocation of a placement order), a contact order or a recovery order made in England and Wales has the same effect in Northern Ireland. If a child is placed for adoption, or an adoption agency is authorised to place a child for adoption, with parental consent under the Adoption and Children Act 2002, the relevant provisions concerning parental responsibility also have effect in Northern Ireland.

*Subsection (2)* sets out that it is an offence for an individual to contravene any of the provisions of the Adoption and Children Act 2002 mentioned in *subsection (3)* and the penalties attached to such an offence. *Subsection (3)* specifies provisions for prohibitions and restrictions on removal of a child.

***Section 111: Use of adoption records from Great Britain, etc.***

Section 111 allows any document that can be used as evidence in England and Wales, Scotland, the Isle of Man, or any of the Channel Islands, under the provisions set out in this section, to also be used as evidence of that matter in Northern Ireland.

### ***Section 112: Channel Islands and the Isle of Man***

Section 112 enables regulations made under *subsection (1)* to provide for:

- orders that are made by a court in the Isle of Man or any of the Channel Islands, and appear to correspond to orders made under a provision of the Act, to be given effect in Northern Ireland (*subsection (1)(a)*);
- any reference in the Act to an adoption agency to include an adoption agency in the Isle of Man or any of the Channel Islands (*subsection (1)(b)*);
- a reference in the Act to other legislation, such as the Children Order, to include reference to corresponding legislation of the Isle of Man or any of the Channel Islands (*subsection (1)(c)*). An example would be where there is a reference to a care or supervision order made under the Children Order;
- a reference in the Act to the United Kingdom or to Great Britain to also include the Isle of Man or any of the Channel Islands (*subsection (1)(d)*).

*Subsection (2)* enables regulations to modify any provision of the Act as it applies to an order made by a court in the Isle of Man or any of the Channel Islands or to anything done under the law of the Isle of Man or any of the Channel Islands.

### ***Section 113: Avoiding delay***

Section 113 is intended to avoid delay in the court process. *Subsection (1)* imposes an obligation on the court, where it is dealing with any matter where the issue of whether a placement or adoption order should be made, or any other question with respect to such an order, to draw up a timetable and give any directions that are necessary to ensure that that timetable is adhered to.

Rules of court may prescribe periods within which steps must be taken in relation to such proceedings and make other provision with respect to such proceedings for the purpose of ensuring that such questions are determined without delay (*subsection (2)*).

### ***Section 114: Service of notices etc.***

*Subsection (1)* provides that any notice or information required to be given under the Act may be given by post. *Subsection (2)* provides that *section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents)* is to have effect as if in *subsection (1)* the word “registering” is omitted.

### ***Section 115: Jurisdiction of courts***

Section 115 provides that “court” in the Act means the High Court or a county court (*subsection (1)*). This is subject to any provision made by or under Schedule 7 to the Children Order. The Department of Justice may, after consulting the Lord Chief Justice, make an order to provide for courts

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of summary jurisdiction to be included among the courts who may hear proceedings under this Part (*subsection (4)*).