

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 2 – Children Order Amendments

Section 126: Authority foster parents

Section 126 inserts a new provision after Article 28 of the Children Order (regulations under Article 27). The new Article 28A (Authority foster parents) places fostering panels on a statutory basis and provides that regulations made under Article 27(2)(a) may make provision that a child may not be placed with an authority foster parent unless that person is approved as an authority foster parent in accordance with prescribed arrangements (*paragraph (1)(a)*) and for a review procedure to be established in respect of a qualifying determination made by a fostering agency (*paragraph (1)(b)*).

New *paragraph (1)(b)* and *paragraphs (2)-(10)* will enable regulations to make provision for prospective or existing foster parents to apply to the Department for an independent review of the determination of a fostering service provider regarding a person's suitability or continuing suitability to foster a child. A qualifying determination is defined in *paragraph (2)*. Regulations may also include the duties and powers of a panel, the administration and procedures of a panel, the appointment of members, the payment of fees to panel members, the duties of any person in respect of the reviews carried out by the panel and the monitoring of such reviews (*paragraph (3)*).

Paragraphs (4) and (5) provide that the regulations may impose a duty to pay a fee to the Department. It gives the Department the power to recover the costs of reviews. However, these costs will not be recoverable from the person who made the application for an independent review. *Paragraph (5)* provides 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.

Paragraph (6) provides that the Department may make an arrangement with an organisation to perform independent review functions on behalf of the Department. An organisation is defined in *paragraph (10)* as including a public body or a private or voluntary organisation. The organisation operating the

independent review mechanism on behalf of the Department must perform its functions in accordance with any directions which the Department may give. If an organisation performs such functions on behalf of the Department, the organisation must adhere to any directions given by the Department (*paragraph (7)*). *Paragraph (8)* make provision for payments to be made to the organisation by the Department. *Paragraph (9)* makes provision similar to *paragraph (5)* where the Department makes payments in respect of an arrangement under *paragraph (6)* for its independent review functions to be performed on its behalf by an organisation.

The definitions of “financial year” and “independent review function” are both included in *paragraph (10)*.

The intention behind this amendment is to allow the Department to regulate the operation of fostering panels in Northern Ireland. Fostering panels are the mechanism by which approval to foster and the removal of approval to foster (following a process of review by the panel) is decided in Northern Ireland. Regulations made under section 126 will provide an additional means for foster parents to challenge a proposal relating to their approval, or the continuation of their approval, by applying to a panel established by the Department for a review of the determination. It is intended that this independent review mechanism for foster parents will operate alongside the mechanism to be established under section 12 to consider applications from prospective adopters for an independent review of an adoption agency determination that they are not suitable to adopt or to withdraw their earlier approval to adopt. Where the prospective adopters/foster parents apply for an independent review, the independent review panel convened to review the case will consider the case afresh and make a recommendation to the adoption or fostering agency, The agency must take that recommendation into account, along with that of the fostering or adoption panel, when making its decision.