

*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 2 – Children Order Amendments**

##### ***Section 139: Definition of privately fostered child***

The law on private fostering arrangements and the role of authorities with respect to them is set out in Part X of the Children Order and in the Children (Private Arrangements for Fostering) Regulations (Northern Ireland) 1996.

Article 106 (Interpretation) of the Children Order defines a privately fostered child as a child who is under the age of 16 (under 18 if he is disabled) and who is cared for and accommodated by someone other than a parent, other person with parental responsibility or close relative. Article 107 further defines the term “privately fostered child” by specifying circumstances under which a child is not to be considered as privately fostered. A child is not privately fostered if the person caring for them has done so for fewer than 28 days and does not intend to do so longer than that. Other exemptions include, for example, where the child is being looked after by an authority, living in accommodation provided by or on behalf of a voluntary organisation, or is in hospital.

Article 107(7)(a) provides that a child is not a privately fostered child while he is placed for adoption by an adoption agency within the meaning of the Adoption (Northern Ireland) Order 1987, the Adoption Act 1976 or the Adoption and Children (Scotland) Act 2007. *Subsection (2)* of section 139 amends paragraph (7)(a) to update the legislative references.

Article 107(7)(b) provides that a child is not privately fostered if he is a protected child. A protected child is defined in Article 33 of the Adoption (Northern Ireland) Order 1987. The provisions in the 1987 Order relating to protected child are being repealed by the Adoption and Children Act. *Subsection (3)* provides that paragraph 7(b) should be omitted.

Where a notice of intention to adopt a child (who has been brought into the country for the purposes of intercountry adoption) has been provided to an authority, the authority will have certain functions to discharge in respect of him, under regulations made under section 84. Following the repeal of the ‘protected

child' provisions in the Adoption (Northern Ireland) Order 1987, such a child may also be considered to be a privately fostered child as defined in Article 106 of the Children Order. If he is, then the authority would have duties in respect of the child under regulations made under Article 108 of the Children Order. The functions imposed on the authority under these regulations are separate from, but additional and similar to, those that may be imposed under the regulations made under section 82. *Subsection (4)* of section 139 inserts a new paragraph (7) (c) in Article 107 to include in the list of exemptions a child in respect of whom an authority has functions by virtue of regulations under section 82(6)(b) of the Adoption and Children Act, or corresponding functions by virtue of regulations under section 1 of the Adoption (Inter-country Aspects) Act (Northern Ireland) 2001. The effect of the provision is to exclude a child in respect of whom a notice of intention to adopt has been served from the definition of a privately fostered child, so preventing the authority being subject to two different sets of duties in respect of the same child.