

*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 116: Definition of family proceedings*

Section 116 amends Article 8(4) of the Children Order to add proceedings for Female Genital Mutilation Protection Orders (“FGMPOs”) in Northern Ireland, under Part 2 of Schedule 2 to the Female Genital Mutilation Act 2003 (other than paragraph 20 of that Schedule), to the list of proceedings which are “family proceedings” for the purpose of the Children Order. Paragraph 20 of Schedule 2 to the 2003 Act provides for circumstances in which FGMPOs may be made by the court during criminal proceedings. The exception in relation to paragraph 20 of Schedule 2 is to make clear that such criminal proceedings are not to be defined as “family proceedings” for the purpose of the Children Order.

The intention is to allow an applicant for an FGMPO to also apply for a care or supervision order (or other such appropriate order under the Children Order) as part of the same proceedings, rather than having to make separate applications for such orders. It will also mean that when a court is dealing with a FGMPO, it will also have powers available under the Children Order to make other orders regarding the welfare of the child. This will increase the ability of the court to protect children at risk.

##### *Section 117: Article 8 orders: authority foster parents*

Section 117 amends Article 9 of the Children Order to reduce the time period a child is required to have lived with a foster carer from three years to one year, before a foster carer is permitted to seek an order under Article 8.

Article 9(3) of the Children Order provides that authority foster carers may not seek leave of the court to apply for an Article 8 order (including a residence order) in respect of a child unless they have the consent of the authority, they are a relative of the child, or the child has been living with them for three years preceding the application. Paragraph 4 of Article 9 provides that the 3 year

period mentioned in the paragraph 3(c) need not be continuous but must have begun more than 5 years before the making of the application.

Section 117(a) replaces the period of three years in Article 9(3)(c) with a period of one year and section 117(b) provides that Article 9(4) shall be omitted. The intention is to align the position with the residence requirement for authority foster carers who wish to adopt a child living with them.

### ***Section 118: Duration of residence orders***

*Subsection (1)* makes clear that this section relates to a child who is looked after by an authority, within the meaning of the Children Order.

Currently, Article 9(6) of the Children Order (restrictions on making Article 8 Orders) states that no court shall make any Article 8 order which is to have effect for a period which will end after the child has reached the age of 16, unless there are exceptional circumstances. An Article 8 order is defined as a contact order, prohibited steps order, residence order and specific issue order. Article 179 of that Order sets out the circumstances under which court orders will be discharged or cease to have effect by the virtue of the making of other court orders in consequence of a child reaching a certain age. Paragraph (10) provides that an Article 8 order shall, if it would otherwise still be in force, cease to have effect when the child reaches the age of 16, unless the court making the order is satisfied that the circumstances of the case are exceptional.

*Subsection (2)* has the effect of amending Article 9(6) of the Children Order in relation to a child who is looked after by an authority so that the court shall not make a specific issue order, contact order or prohibited steps order for a period which will end after the child has reached the age of sixteen unless it is satisfied the circumstances of the case are exceptional. *Subsection (3)* has the effect of amending Article 179(10) of the Children Order in relation to a child who is looked after by an authority by inserting after "Article 8 order" the words "other than a residence order".

The effect of these modifications is that a residence order in respect of a child who is looked after by an authority will last until the child has reached eighteen years old unless the court considers it should end earlier or another order is made discharging the residence order prior to that date. Residence orders made in relation to children who are not looked after by an authority, and the other Article 8 orders (made in respect of all children) remain unchanged, ceasing to have effect at the age of 16, unless the court considers that the circumstances of the case are exceptional.

### ***Section 119: Special guardianship***

Special guardianship orders (SGOs) are intended to meet the needs of children who cannot live with their birth parents, for whom adoption is not appropriate, but who could still benefit from a legally secure placement.

*Subsection (1)* inserts new Articles 14A to 14F into the Children Order to provide for the new SGO. The new Articles provide for who may apply for an order, the circumstances in which orders may be made, the nature and effect of SGOs, when a court may vary or discharge a SGO and for authority support services for special guardians.

#### Special Guardianship Orders - Article 14A

*New Article 14A* provides for who may apply for an SGO and the application process. The person in whose favour an SGO is made is a 'special guardian'. People may apply jointly to become special guardians. They need not be married. *Paragraph (2)* provides that special guardians must be 18 or over and that the parents of a child may not become the child's special guardian. *Paragraphs (3) to (5)* make provision about who may apply for an order. A court may make an SGO in respect of any child on the application of:

- any guardian of the child with whom the child has lived for one year;
- an authority foster carer with whom the child has lived for one year;
- anyone who holds a residence order with respect to the child, or has the consent of all those in whose favour a residence order is in force, and with whom the child has lived for one year;
- anyone with whom the child has lived for three out of the last five years;
- where the child is in the care of an authority, anyone with the authority's consent if the child has lived with the applicant for at least a year;
- a relative with whom the child has lived for a period of least one year immediately preceding the application;
- in any other case, anyone who has the consent of all those with parental responsibility for the child and with whom the child has lived with for at least one year; and
- anyone else, including the child, who has the leave of the court to apply and has met the one year residency requirement.

Under *paragraph (6)*, the court may also make an SGO in any family proceedings concerning the welfare of a child if they consider an order should be made and an application for such an order has been made. Family proceedings are defined in Article 8(3) of the Children Order and will include adoption proceedings under this Act. The court may also, in any proceedings on an application for a care or supervision order concerning the welfare of the child, make an SGO if they consider that an order should be made, even if no such application has been made. When considering making an SGO, the child's welfare is the court's paramount consideration, and the welfare checklist in Article 3(3) of the Children Order applies.

*Paragraphs (7)* onwards set out the application process. Applicants must give 3 months' written notice to the authority of their intention to apply for the order.

The only exception to this is where a person has the leave of the court to make a competing application for an SGO at a final adoption order hearing, in which case the 3 month period does not apply. This is in order to prevent the competing application delaying the adoption order hearing.

On receipt of notice, the authority must then investigate and prepare a report to the court about the suitability of the applicants to be special guardians and any other relevant matters. It is intended that regulations may prescribe matters to be covered in the report. *Paragraph (11)* provides that the authority may arrange for someone else to carry out the investigation or prepare the report. Where the child in question is being looked after by an authority, *paragraph (10)* places a duty on the authority to prepare the report for court in accordance with prescribed arrangements. Such arrangements may, for example, include that the report is considered by a Panel prior to its issue to the court to ensure that a proper assessment process has been followed and that all relevant matters have been considered and included in the report. *Paragraph (12)* provides that the court may not make an order unless it has received a report covering the suitability of the applicants.

Special guardianship orders: making – Article 14B

*New Article 14B* will provide that before making an SGO the court must consider whether or not to vary or discharge any other existing order made under Article 8 of the Children Order (such as a contact order or residence order) and also whether a contact order (for example, to enable continued contact with the child's birth parents) should be made at the same time as the SGO. The court may also, on making the SGO, give leave for the child to be known by a new surname and grant leave for the child to be removed from the United Kingdom for a period longer than three months.

Special guardianship orders: effect – Article 14C

*New Article 14C* sets out the effect of SGOs. *Paragraph (1)(a)* awards the special guardian parental responsibility for the child. Subject to any other order in force made under the Children Order, a special guardian may exercise parental responsibility to the exclusion of others with parental responsibility for the child apart from another special guardian (*paragraph (1)(b)*). An exception applies in those circumstances where the law provides that the consent of all parties with parental responsibility may be or is required (for example, the sterilisation of a child) (*paragraph (2)(a)*). *Paragraphs (3)* and *(4)* provide that while an order is in force the child may only be known by a different surname or be removed from the United Kingdom for longer than three months with the consent of all those who have parental responsibility, or with the leave of the court.

The intention is that the special guardian has full responsibility for all the day to day decisions about caring for the child or young person and for taking decisions about their upbringing. However, the order retains the basic legal link with the birth parents, unlike adoption. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited. They retain

the right to consent, or not, to the child's adoption or placement for adoption (*paragraph 2(b)*). *Paragraph (5)* provides that the special guardian must also take reasonable steps to inform each parent of the child or each guardian of the child, if the child dies.

#### Special guardianship orders: variation and discharge – Article 14D

New *Article 14D* provides that, unlike adoption orders, SGOs can be varied or discharged on the application of:

- the special guardian/s;
- the child's parents or guardian (they may only apply with leave of the court and leave is to be granted only if there has been a change of circumstances since the order was made);
- any step parent who has parental responsibility by virtue of Article 7(1A) (with the leave of the court, to be granted only if there has been a change of circumstances);
- anyone who had parental responsibility immediately before the SGO was made (with the leave of the court, to be granted only if there has been a change of circumstances);
- the child (with the leave of the court);
- if a care order is made in respect of the child, the authority can apply to discharge the SGO; or
- anyone who has a residence order in respect of the child.

*Paragraph (2)* provides that the court may, during any family proceedings in which a question arises about the welfare of a child who is subject to an SGO, vary or discharge the order in the absence of an application.

*Paragraph (4)* provides that where the person applying to the court for leave to make an application is the child, the court may only grant leave if it satisfied that the child has sufficient understanding to make the proposed application.

#### Special guardianship orders: supplementary – Article 14E

New *Article 14E* makes supplemental provisions, including allowing the court to set timescales and give directions as appropriate for proceedings involving special guardianship applications.

#### Special guardianship support services – Article 14F

New *Article 14F* makes provision for authority support services for special guardians, children subject to special guardianship orders, their parents and others. Each authority must arrange to provide support including counselling, advice and information, and such other services as are prescribed in regulations (*paragraph (1)*). *Paragraph (2)* provides that the power to make regulations under paragraph (1)(b) is to be exercised so as to secure that authorities provide

financial support. An authority must, at the request of a relevant child, their current or prospective special guardian or parent, or any other prescribed person, carry out an assessment of that person's needs for special guardianship support services (*paragraph (3)*). “Relevant child” and “prospective special guardian” are defined in *paragraph (4)*. It is intended that Regulations will be made to ensure that authorities put in place a range of support services. *Paragraph (5)* gives authorities the discretion to carry out an assessment of need for support services at the request of any person other than those specified in *paragraph (3)*.

*Paragraphs (6) to (13)* govern the assessment process and, where support services are to be provided, the arrangements for their provision. *Paragraph (7)(a)* provides that the duty to provide services assessed as needed will apply to any of the categories of persons specified in *paragraph (3)(a) to (d)* in respect of whom an authority has a duty to undertake an assessment. *Sub-paragraph (b)* will enable additional categories of persons to be prescribed. As with adoption support services, the needs assessment may be carried out at the same time as an assessment of that person's needs for any other purpose (*paragraph (12)*). Again, the intention is to facilitate joined-up planning and provision of public services support. There is provision for an authority to delegate assessments and the provision of special guardianship support services to another authority or prescribed person (*paragraph (11)*) if they so desire, to assist with administration of services/efficient use of resources.

*Subsections (2) to (5)* of section 119 amend Articles 3, 57, 159 and 160 of the Children Order. *Subsection (2)* amends Article 3 to apply the welfare checklist to special guardianship applications. *Subsection (3)* amends Article 57 to enable the court, where in any care or supervision proceedings it makes an SGO, to also make an interim supervision order with respect to the child if it considers it necessary to do so to satisfactorily safeguard the child's welfare. The court may do so if it considers an SGO is the better option for the child but the child has not lived with the special guardian for at least one year. This will mean the authority must continue to safeguard the child's welfare during the period of the interim supervision order and remain involved in cases where the child has not lived with their special guardian for at least a year before the order was granted. *Subsections (4) and (5)* amend Articles 159 and 160 to make provision about the appointment of guardians by the court for children after the death of a special guardian.

Minor and consequential provision about special guardianship is made in [Schedule 3](#). Schedule 3 amends the provisions added to the Children Order by the Children (Leaving Care) Act (Northern Ireland) 2002, that is, Article 35 (persons qualifying for advice and assistance), Article 35A (advice and assistance for qualifying persons) and Article 35B (assistance with employment, education or training). The purpose of these amendments is to place a duty on authorities to consider whether to provide advice and assistance to former looked-after children aged between 16 and 21 subject to SGOs, including support for employment, education and training. Where the authority determines the child is in need of advice and assistance that the special guardian cannot give him,



the authority is placed under a duty to advise and befriend him and may also provide him with assistance, for example in respect of education and training.

Schedule 3 also amends Article 179 of the Children Order (effect and duration of orders, etc.) to provide that the making of an SGO discharges any existing care order. However, if the need arises, a care order or a residence order may be made while an SGO is in force. If made, the SGO is not automatically discharged but the authority concerned or person in whose favour the residence order is made will have the right to apply for discharge or variation of an SGO by new Article 14D.

### ***Section 120: Ascertainment of children's wishes***

Section 120 amends Article 18 (general duty of authority to provide social care for children in need, their families and others) and Article 21 (provision of accommodation for children: general) of the Children Order to require an authority to ascertain the wishes and feelings of the child in relation to the provision of those services and to give those wishes due consideration before determining what (if any) services to provide. Section 120 also makes similar amendment to Article 66 of the Children Order in relation to the authority's duty to investigate.

Article 18 sets out the general duty of authorities to safeguard and promote the welfare of children in need in their area and subject to that duty, to promote the upbringing of those children by their families. This is to be achieved through the provision of personal social services appropriate to those children's needs and the provision of services for the family of the child where it would safeguard and promote the child's welfare. *Subsection (1)* inserts a new paragraph (4A) into Article 18. It places a duty on an authority that, when determining what services to provide to a child in need, the authority so far as reasonable practicable and consistent with the child's welfare, should ascertain the child's wishes and feelings and have due regard to them.

Article 21 requires the authority to provide accommodation for children in need in its area who require accommodation in certain specified circumstances. Paragraph (6) requires an authority before providing accommodation for a child to ascertain and take into consideration the child's wishes in relation to the provision of accommodation, having regard to the age and understanding of the child. *Subsection (2)* of section 120 amends paragraph (6) to provide that the authority must also take into consideration the child's feelings.

Article 66 places a duty on an authority to investigate where a child in its area has been made subject of an emergency protection order or taken into police protection, or where the authority has reasonable cause to suspect the child has or is likely to suffer significant harm. It requires the authority to consider what course of action to take, sets out the direction the enquiries should take and provides that certain bodies must assist the authority in investigations provided that this would not be unreasonable. *Subsection (3)* of section 120 inserts new paragraph (5A) into Article 66. It has the effect of placing a duty on

the authority that when making a determination under this Article, they must as far as is reasonably practicable and consistent with the child's welfare, ascertain the wishes and feelings of the child and give due consideration to them, again taking into consideration the age and understanding of the child.

***Section 121: Provision of services to children in need, etc.***

Article 18 of the Children Order sets out the general duty of authorities to safeguard and promote the welfare of children in need in their area and, subject to that duty, to promote the upbringing of those children by their families. This is to be achieved through the provision of personal social services appropriate to those children's needs and the provision of services for the family of the child where this would safeguard and promote the child's welfare. Authorities must facilitate the provision of services by voluntary organisations and others and will have the specific powers and duties set out in Schedule 2 as regards children in need and their families. Paragraph (6) states that the services provided by an authority in the exercise of its functions in relation to children in need may include giving assistance in kind or, in exceptional circumstances, this assistance may take the form of cash.

*Subsection (1)* inserts a new *paragraph (6)* in Article 18. The restriction on the making of cash payments only in exceptional circumstances has been removed. The intention is to allow authorities greater flexibility and to exercise wider discretion over the circumstances in which they make cash payments to those caring for children in need.

New *paragraph (6A)* places a duty on the authority, when deciding on whether to give assistance in cash, to have regard to any guidance provided by the Department.

New *paragraph (6)*, as inserted by *subsection (1)*, also provides that the services provided by an authority may include accommodation to an eligible child. An eligible child is defined in new *paragraph (6C)(a)* as a child who is not being looked after by an authority and is disabled. New *paragraph (6C)(b)* also provides a power to prescribe further categories of children who may be considered as an eligible child. New *paragraph (6B)* provides that, in providing accommodation, the authority must have regard to any guidance provided by the Department.

*Subsection (2)* amends Article 25(2) of the Children Order to provide that, where such accommodation is provided under Article 18, the child will not become a "looked after child". The intention, in making such amendments, is for the purpose of providing short breaks for disabled children, without making the child looked after. Should a child need to be looked after, they will be accommodated by authorities under Article 21.



***Section 122: Duty of authorities to promote etc. achievement, learning and development, and to prevent disruption to education or training***

Article 26 of the Children Order (general duty of authority) sets out the general responsibilities which an authority has towards any child it looks after. The authority has a duty to safeguard and promote the welfare of any child it is looking after and must make reasonable use of services available for children cared for by their parents. Before making any decision with respect to a child it is looking after, the authority must, so far as is reasonably practicable, ascertain the wishes and feelings of the child, the parents and anyone with parental responsibility for them.

*Subsection (1)* inserts new paragraph (1A) into Article 26 of the Children Order to provide that the duty of an authority under Article 26(1) to safeguard and promote the welfare of a child looked after by an authority includes, in particular, a duty to promote, facilitate and support the child's learning and development, and achievement in relation to education or training.

Article 27 of the Children Order (accommodation and maintenance of children) imposes a duty on each authority to provide accommodation and maintenance for every child it is looking after. It provides for such children to be placed with family, with foster parents or in residential accommodation. In addition it imposes duties on the authority, so far as is practicable or consistent with the child's welfare, to place a child with relatives or friends, secure any accommodation near the child's home, accommodate siblings together and secure that accommodation for a disabled child is not unsuitable to the child's needs. *Subsection (2)* amends Article 27(8) to insert a new sub-paragraph (c) which places a duty on authorities to ensure (so far as is practicable or consistent with the child's welfare) that, in determining the most appropriate placement for a child, such a placement does not disrupt the child's education or training.

The new duties will mean that an authority will have to give particular attention to the educational implications of any decision about the welfare or accommodation of any child they are looking after. That might be for instance the need to organise a suitable school placement at the same time as arranging a new care placement.

***Section 123 – Corporate parenting principles***

Section 123 defines corporate parenting principles in legislation by inserting a new Article 26A into the Children Order. It introduces seven key needs (collectively known as corporate parenting principles) which authorities must have regard to whenever they exercise a function in relation to looked after children, relevant children and former relevant children (otherwise known as looked after children and care leavers).

*Paragraph (1)* of new Article 26A requires an authority, in carrying out their functions in relation to the persons to whom this Article applies, to have regard to the need:

- to act in their best interests of, and to promote their well-being;
- to encourage them to express their views, wishes and feelings;
- to take account of their views, wishes and feelings;
- to help them gain access to and get the best use of the services provided by an authority, and by any relevant partner;
- to promote high aspirations and seek to secure the best outcomes for them;
- for them to be safe and for stability in their home lives, relationships and education or work; and
- to prepare them for adulthood and independent living.

*Paragraph (2)* sets out the persons to whom Article 26A applies – looked after children, relevant children (as defined in Article 34B(2)) and former relevant children (as defined in Article 34D(1)).

*Paragraph (3)* defines a “relevant partner” as a “children’s authority” and “other children’s service provider” within the meaning given by section 9 of the Children’s Services Co-operation Act (Northern Ireland) 2015 and “well-being” has the meaning given by section 1 of that Act. The intention is to strengthen links to that Act and the duty to co-operate that it provides.

*Paragraph (4)* requires an authority to have regard to any guidance given by the Department as to the performance of the duty under paragraph (1).

### ***Section 124: Placement of looked after children with prospective adopters***

Section 124 amends Article 27 of the Children Order (Accommodation and maintenance for children) by inserting new *paragraphs (9A), (9B), and (9C)*. New *paragraph (9A)* imposes a duty on an authority looking after a child, when they are considering adoption for the child, or are satisfied that the child ought to be placed for adoption but are not authorised to place that child for adoption, to consider placing the child in a “Fostering for Adoption” placement.

A “Fostering for Adoption” placement is a foster placement with approved authority foster parents who are also approved prospective adopters, in circumstances where the authority are considering adoption as an option for the child’s long term care (whether it is the only option they are considering, or one of several) or are satisfied that the child ought to be placed for adoption but do not yet have authorisation to place the child for adoption. In these circumstances the authority will be under a duty to consider a “Fostering for Adoption” placement. *Paragraph (9B)* provides that the authority must first have considered placing the child with an individual who is a relative, friend or other connected person who has been approved as an authority foster parent and ruled them out as not being the most appropriate potential carers for the child. Where paragraph (9B) applies, paragraphs (7A) to (9) of Article 27 do not apply.

In new *paragraph (9C)*, the duty in paragraph (9B) does not apply where the adoption authority has applied for a placement order under section 18 of the Act in respect of the child and the application has been refused.

### ***Section 125: Accommodation for children: requirements***

Section 125 amends Article 27 (accommodation and maintenance for children) and Article 28 (Regulations under Article 27) of the Children Order to provide additional regulation making powers.

Paragraph (2)(aa) of Article 27 is amended to insert a power for the Department to make regulations relating to the way in which a looked after child is to be maintained in an appropriate children's home (*subsection (2)*). Regulations will specify duties that an authority must undertake in relation to all looked after children, regardless of where they are accommodated, including all types of children's homes.

*Subsection (3)* inserts new paragraph (7A) in Article 27 to provide that the Department may by regulations impose requirements which an authority must comply with before making any decision concerning the provision of accommodation for a child it is looking after. This provision is linked to the amendments to Article 28 below.

*Subsection (4)* amends Article 28 to insert a new paragraph (4) to provide that regulations made under Article 27(7A) may, in particular, impose requirements which an authority must comply with before making a decision concerning the provision of accommodation for a child it is looking after, which could disrupt the child's education; or before making any decision to provide a looked after child with accommodation outside the authority's area or, if the child's welfare requires the immediate provision of accommodation outside the authority's area, within such period of the accommodation being provided as may be prescribed. Such requirements may, for example, apply when a looked after child is at a key stage in their education and any disruption to their education would have a detrimental impact on them.

### ***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.

***Section 127: Duty to ensure visits to and advice etc. for children***

Section 127 inserts new Article 28B into the Children Order. This provision requires an authority to ensure that all looked after children are visited by a representative of the authority and that appropriate advice, support and assistance is made available to the child if the child requests it from the authority (*paragraph (2)*).

The Department may, by regulations, specify how the duties are to be discharged (*paragraph (3)(a)*); and in particular may specify the frequency of the visits; the circumstances in which the visit must take place and the functions of the representative (*paragraph (4)*). The authority must satisfy itself that the person chosen has the necessary skills and experience to perform the functions of a representative. Performance of these duties will be subject to any particular statutory requirements that may apply to the circumstances in which, or the place where, the child is actually living, for example in a children's home or in relation to children who are held in custody or who are liable to be detained (*paragraph (3)(b)*).

***Section 128: Former relevant children: continuing functions***

*Subsection (1)* inserts a new Article 34AA (preparation for ceasing to be looked after: continuing care arrangements) in the Children Order which places a duty on authorities as part of an assessment of an eligible child's needs, undertaken in accordance with Article 34A(5), to determine the appropriateness of providing advice, assistance and support in order to work towards facilitating a future continuing care arrangement.

*Subsection (2)* inserts a new Article 34DA into the Children Order. This sets out what constitutes a continuing care arrangement, the duties placed on authorities for the duration of the arrangement and the conditions that underpin the support from the authority. New *paragraph (2)* provides that a continuing care arrangement is one where the young person is someone who was in care immediately prior to their 18th birthday as an eligible child, and that person continues to reside with their former foster carer once they turn 18.

So long as the arrangement is consistent with the welfare of the young person, the authority is required to provide advice, assistance and support to them and their former foster parent to support the maintenance of the arrangement. The authority is also required to monitor the arrangement (*paragraph (3)*). The support provided to the former foster carer must include financial support (*paragraph (4)*). These duties will continue until the young person reaches the age of 21 (*paragraph (6)*) unless either they or their former foster parent decides to end the arrangement sooner (*paragraph (7)*).

*Subsection (3)* inserts a new Article 34DB (further advice and support) into the Children Order to extend existing duties which an authority has under Article 34D of the Children Order towards former relevant children (as defined in that

Article). It applies to former relevant children who have reached age 21 but not 25, or such other age as may be prescribed in regulations (*paragraph (1)*).

New Article 34DB imposes a new set of duties on an authority where a former relevant child requests advice and support, regardless of whether that young person intends to pursue a course of education and training. *Paragraph (3)* provides that the first duty is for the authority to appoint a personal adviser for the child if he or she requests help until such time as he or she reaches the age of 25 or he/she informs the authority that a personal adviser is no longer required.

*Paragraph (4)* requires the authority to carry out an assessment of the young person's needs and to prepare a pathway plan for them. *Paragraph (5)* defines an assessment of needs under paragraph (4) as an assessment to determine whether any services offered by the authority may help to meet the young person's needs, and what advice and support it would be appropriate for the authority to provide to help the young person obtain those services. *Paragraph (6)* places a duty on the authority to provide the former relevant child with any advice and support that the assessment identified as appropriate.

The authority may continue to provide a former relevant child with advice and support after they have reached the age of 25, or any other prescribed age, if the authority is satisfied that the former relevant child has needs that cannot be met other than by providing such advice and support (*paragraph (7)*). *Paragraph (8)* provides that an authority must offer to provide a former relevant child with advice and support if they are not already receiving it, as soon as possible after they reach the age of 21, and at least once every 12 months thereafter.

*Subsection (3)* of section 128 also inserts a new Article 34DC (Further assistance to pursue education or training) into the Children Order, which extends the duties of authorities to appoint a personal adviser. Currently all eligible, relevant and former relevant children (defined in Article 34D) must have a personal adviser who will, in accordance with regulations made under Article 34C, be involved in drawing up the young person's pathway plan, make sure that it is regularly reviewed, and that it is implemented. When the young person leaves care, and until they are at least 21, the personal adviser will in practice be responsible for performing the authority's duty to keep in touch with them and ensuring that they receive the advice and support to which they are entitled.

New Article 34DC extends the duties of authorities to appoint a personal adviser to include a former relevant child who informs the responsible authority (that is, the authority that formerly looked after him) that he is pursuing or intends to pursue a programme of education or training but to whom the authority would otherwise owe no duty under Article 34D because the young person is over 21 years of age and has completed (or abandoned) the programme set out in their original pathway plan (*paragraphs (1) and (2)*). In relation to such a young person, who must be under 25 years (or such age as may be prescribed), the authority must also carry out an assessment of needs, prepare a pathway plan and determine what assistance is required (*paragraph (3)*). The authority may provide assistance such as contributing to expenses incurred by the person in



living near the place where is, or will be receiving education or training or they can make a grant available to meet expenses connected with their education or training (*paragraph (5)*).

*Paragraph (6)* requires the authority to provide assistance (including appointment of a personal adviser and maintenance of the pathway plan) for as long as the young person continues to pursue the agreed educational or training programme, even where this programme goes beyond a young person's 25th birthday.

*Paragraph (8)* provides that any assistance made to the young person under Article 18(7) to (9) of the Children Order should be taken into account when determining what assistance the young person should be given. However, references in Article 18(8) that an authority must have regard to the means of the child's parents before assistance may be given should be disregarded for the purpose of assistance under new Article 34DC.

### ***Section 129: Local offer for care leavers***

Section 129 inserts new Article 34G (Local offer for care leavers) in the Children Order. *Paragraph (1)* requires an authority to publish information about the services which it offers to care leavers as a result of its duties under the Children Order and other services it offers that may assist care leavers in or in preparing for adulthood and independent living.

*Paragraph (2)* sets out the kinds of services that may assist care leavers in, or in preparing for adulthood and independent living. These are services relating to: health and well-being; relationships; education and training; employment; accommodation; and participation in society.

*Paragraph (3)* provides that, where it considers it appropriate, the authority must also publish information about services for care leavers offered by others which an authority has the power to offer itself. This could for example, include the offer of advocacy services provided by a voluntary organisation contracted to do so or where a voluntary organisation is offering advice/support to young people relating to matters such as managing finances, counselling, building relationships, parenting skills etc.

The information to be published is to be known as an authority's "local offer for care leavers" (*paragraph (4)*). An authority must update its local offer from time to time (*paragraph (5)*). Before publishing its local offer, or any updated version of it, an authority is required to consult persons who appear to it to be representative of care leavers in its area, about which of the services offered by the authority may assist care leavers in, or in preparing for, adulthood and independent living (*paragraph (6)*).

*Paragraph (7)* defines "care leavers" within the meaning of the Order as 'eligible children under Article 34A(3)', 'relevant children' under Article 34B(2), 'persons under 25 who are 'former relevant children' under Article 34D(1) and those who qualify for advice and assistance under Article 35(1).

### ***Section 130: Inquiries into representations***

Section 130 amends Article 35D (Representations: Articles 34B to 35B) and Article 45 (Reviews and representations) of the Children Order by making further provision for inquiries carried out by authorities into representations about services provided under that Order. This section enables regulations to be made to impose time limits for the making of representations, to provide for an informal resolution stage and to extend the complaints procedure to specified services provided under Parts 5 and 6 of the Children Order.

*Subsection (1)* amends Article 35D to insert a new paragraph (1A) that enables the Department to make regulations imposing time limits on the making of representations under Article 35D(1) (Representations: Article 34B to 35B) of the Children Order.

*Subsections (2) to (7)* amend Article 45 (Reviews and Representations) which requires the authority to establish a procedure for considering any representations about services provided by them under Part 4 of the Children Order. New paragraph (4A), inserted by *subsection (6)*, provides that the Department may make regulations imposing time limits on the making of representations under Article 45.

*Subsection (3)* amends paragraph (3) to provide that every authority must establish a procedure for considering representations, including complaints, in respect of "qualifying functions". Qualifying functions are referred to in *subsection (4)* which amends Article 45 to insert new paragraphs (3A), (3B) and (3C). New paragraph (3A) provides that qualifying functions include functions under Part 4 (Support for Children and their Families) and functions under Part 5 (Care and Supervision) or Part 6 (Protection of Children) of the Children Order as specified by the Department in regulations. Under new paragraph (3B), the duty under Article 45(3) also extends to representations (including complaints) made to an authority by any person mentioned in section 4(1) of the Adoption and Children Act or to any other person the authority considers has sufficient interest in a child who is or may be adopted. New paragraph (3C) provides that it also extends to representations (including complaints) made to an authority by a child with respect to whom a special guardianship order is in force, a special guardian or a parent of such child, or any person the authority considers has sufficient interest in the welfare of such a child to warrant that person's representations to be considered.

*Subsection (5)* amends Article 45(4) to provide that the requirement to involve an independent person in the complaints procedure is subject to the provisions in new Article 45(5A) that is inserted by *subsection (7)*. New Article 45(5A) enables regulations to be made providing that the requirement for an independent person does not apply in relation to the procedure for any informal resolution stage established in regulations. *Subsection (8)* amends Article 183 (regulations and orders) of the Children Order, by inserting a new paragraph (2A) to provide that regulations under Article 35D(1A) or Article 45(4A) must not be made

unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

### ***Section 131: Review of cases of looked after children***

Section 131 amends Article 45(2) of the Children Order (reviews and representations) to provide that regulations may be made to require an authority to review the care plan of a looked after child. These requirements apply in the case of both children who are subject to a care order and those who are accommodated by the authority.

When reviewing an Article 50A care plan the authority may revise the plan or make a new plan where necessary (new *paragraph (2)(e)(ii)*). Where the child does not already have a care plan, the authority is required to prepare one (new *paragraph (2)(f)(i)*).

### ***Section 132: Independent advocacy services***

Section 132 inserts new Article 45A (Independent advocacy services) in the Children Order to place a duty on authorities to make arrangements for assistance to persons who make, or intend to make, representations under Article 35D and to children who make, or intend to make, representations under Article 45 of the Children Order (new *paragraph (1)*). New *paragraph (2)* provides that the assistance to be provided shall include assistance by way of representation.

New *paragraph (3)(a)* provides that the advocacy service must not be provided by a person who is prevented from doing so by regulations made by the Department. This provision will be used to ensure the independence of the service for example, by providing that no person involved in the management of the case in question or in considering the complaint may act as an advocate.

New *paragraph (3)(b)* provides that the arrangements must also comply with any other provision made by the regulations. New *paragraph (4)* provides for authorities to monitor the provision of assistance under this section to ensure that they comply with regulations made for the purposes of paragraph (3) (i.e. ensuring independence). This reflects Article 45(6) of the Children Order. New *paragraph (5)* provides that every authority shall give such publicity to their arrangements for the provision of assistance as they consider appropriate. This reflects Article 45(8) of the Children Order.

### ***Section 133: Definition of harm***

Article 2(2) of the Children Order defines “harm” as “ill-treatment or the impairment of health or development and the question of whether harm is significant shall be determined in accordance with Article 50(3)”.

Section 133 amends Article 2(2) to provide further definition of “impairment of health or development” to include, for example, impairment suffered as a result of the ill-treatment of another or behaviour directed at another that falls within section 2 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland)

2021 (or what amounts to abusive behaviour), whether or not the child who has suffered the impairment saw or heard, or was present during that ill-treatment or behaviour (*subsection (1)*).

As a consequence, “harm” will include cases where a child is adversely impacted by domestic abuse, even if they have not seen, heard, or been present during its taking place.

*Subsection (2)* amends Article 12A of the Children Order. Article 12A places a duty on the court, when considering whether to make a residence order or contact order in favour of a prohibited person, to consider whether the child has suffered or is at risk of suffering any harm through seeing or hearing ill-treatment of another person by the prohibited person. Article 12A(2) defines a prohibited person for the purposes of paragraph (1). In order to ensure that there is consistency of approach in the application of harm across all provision in the Children Order, Article 12A is amended to provide that the court shall consider whether the child has suffered or is at risk of suffering any harm as a result of any behaviour of the prohibited person.

### ***Section 134: Care plans***

*Subsection (1)* inserts new Article 50A (Care orders: care plans) into the Children Order. This places a duty on the authority in whose favour a care order is intended to be, or may be, made to prepare a care plan within a timescale set by the court (*new paragraph (1)*) and to review and revise the plan, if necessary, while the application to the court is pending (*new paragraph (2)*). A care plan prepared under new Article 50A is to be referred to in the Children Order as an "Article 50A plan" (*new paragraph (6)*). Regulations will set out how the plan is to be drawn up and the information to be included (*new paragraph (3)*). References to a care order in new Article 50A do not include an interim care order (*new paragraph (5)*).

*Subsection (2)* provides for transitional arrangements in relation to care plans, supporting care orders, prepared before subsection (1) comes into operation. Such plans to support the care order, if they are still in force on the day subsection (1) comes into operation, will have effect as if they were made under new Article 50A.

### ***Section 135: Contact: children in care of authority***

Article 53 of the Children Order (parental contact etc. with children in care) provides that where a child is in the care of an authority the authority must allow the child reasonable contact with their parents or guardians, or certain other persons specified in Article 53(1). Authorities are also required, under Article 29 (Promotion and maintenance of contact between the child and family) of that Order, to endeavour to promote contact between all looked after children and those persons listed in paragraph (1) including the child's parents and other relatives of the child.

Subsection (2) amends Article 53(1) to make it clear that the authority's duty to allow reasonable contact between a child in the care of the authority and those people listed in Article 53(1)(a) to (d) is subject to the authority's duty to safeguard and promote the welfare of looked after children under Article 26(1) (a) of the Children Order ((General duty of authority). If allowing contact with any of those persons would not safeguard and promote the welfare of the child, the authority should not allow the contact.

Subsection (3) inserts a new *paragraph (6A)* into Article 53 to provide that where an authority is refusing contact under Article 53(6) with any of the persons listed in Article 29(1)(a) to (c) , or where an authority has obtained a court order under Article 53(4) authorising them to refuse contact with any of those persons, the duty in Article 29(1) to endeavour to promote contact no longer applies.

Subsection (4) inserts new sub-paragraph (za) into Article 53(8) to provide that regulations made under Article 53(8) may prescribe the matters that the authority must have regard to when determining whether contact between the child and any of the people mentioned in Article 53(1)(a) to (d) is consistent with safeguarding and promoting the child's welfare.

Article 53(11) provides that, before making a care order with respect to any child, the court has to consider the contact arrangements that the authority has made or proposes to make and invite the parties to the proceedings to comment on those arrangements. Subsection (5) amends that paragraph to provide that the court's duties also apply before the court makes, varies or discharges an order under Article 53.

### ***Section 136: Persons authorised to act as children's court guardian***

Article 60 of the Children Order (Representation of child and his interests in certain proceedings) provides that, for the purposes of any specified proceedings, a court shall appoint a children's court guardian (previously referred to as a guardian ad litem (see section 137) for the child concerned unless satisfied that it is not necessary to do so in order to safeguard the child's interests. A children's court guardian is to be appointed under rules of court where an application for the making, variation or discharge of a care or supervision order is made, including the related appeals or where the court is considering making an interim care order, a residence order or contact order and related appeals. A children's court guardian may also be appointed by the court where an application for a child assessment order or other proceedings under Part VI of the Order have been made. Article 60 also provides for a solicitor to be appointed by the court. Article 60(7) provides that the Department may make regulations to provide for the establishment of panels of persons from whom children's court guardians must be selected. Article 60(9) provides that the regulations may stipulate the constitution, procedures etc. of such panels and qualifications of and training to be given to children's court guardians. Article 60(10) provides that Rules of the Court may set out what assistance children's court guardians may be required to give to a court.

*Subsection (1)* amends paragraph (7) of Article 60 by omitting the provision for the establishment of panels from which to appoint children’s court guardians and instead provides that the Department may by regulations provide that children’s court guardians appointed under this Article must be selected from persons employed or approved for that purpose by such special agency or other public body as may be prescribed. The rationale behind this amendment is to provide for the direct employment of children’s court guardians and will, for example, enable the operation of disciplinary and complaints procedures in relation to their employment to be streamlined.

***Section 137: Renaming of guardians ad litem***

*Subsection (1)* provides that a guardian ad litem is to be known as a children’s court guardian. *Subsections (2) to (4)* amends references to “guardian ad litem” in relevant Northern Ireland primary legislation, including the Children Order, to substitute “children’s court guardian”. *Subsection (5)* provides that any reference in any other statutory provision to a guardian ad litem is to be read as a reference to a children’s court guardian.

***Section 138: Interests of children in proceedings***

Section 138 amends Article 60(6) of the Children Order to insert a new *sub-paragraph (ha)* to provide that applications for the making of a special guardianship order for a child who is the subject of a care order are ‘specified proceedings’. This means that a children’s court guardian will be appointed and the child separately represented in every case (unless the court decides this is unnecessary).

***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.

#### ***Section 140: Welfare of children who will be privately fostered***

Article 108 of the Children Order places a duty on authorities to ensure the welfare of privately fostered children, in their area, is being safeguarded and promoted. They must also secure that private foster parents are provided with advice if the authority feels this is necessary. It also enables the Department to make regulations requiring authorities to arrange for privately fostered children to be visited. If an authority is not satisfied that the child's welfare is being satisfactorily safeguarded or promoted, it must, take reasonable steps, unless it would not be in the child's best interests to secure that the child is looked after by a parent, relative of the child or a person with parental responsibility for the child.

*Subsections (2), (4) and (5)* amend Article 108 to provide that the duties which apply to an authority in respect of children who are privately fostered and those caring for them also apply in respect of children who are proposed to be privately fostered and their prospective carers.

Article 108(2) of the Children Order gives the Department the power to make regulations about visits by an authority to privately fostered children and

imposing requirements which are to be met by the authority in carrying out their functions under this Article. *Subsection (3)* inserts a new paragraph (2A) which provides that the regulations made under paragraph (2)(b) may impose requirements as to the action an authority must take when they are informed that a child is going to be privately fostered. The intention is that these regulations will require an authority to carry out proper checks on, and satisfy themselves of the suitability of, a proposed arrangement or exercise their powers to prohibit, or impose requirements on, the arrangement before the child is privately fostered.

***Section 141: Notification of fostering: public awareness***

Article 112 (Regulations requiring notification of fostering) of the Children Order enables the Department to make regulations concerning notification requirements in respect of children who are, have been, or are proposed to be privately fostered. The regulations require parents who arrange or intend to arrange for their children to be privately fostered to notify the appropriate authority. Notification is also required by private foster carers when they take on and terminate such an arrangement. If a private foster carer changes their address or if there is any change in the persons living in their household, the private foster carer must notify the appropriate authority. The regulations also require a person who is privately fostering, or proposing to privately foster a child to notify the appropriate authority of any convictions against him, or of any disqualification or prohibition imposed on him by an authority.

Section 141 inserts a new Article 112A into the Children Order which places a duty on every authority to raise public awareness of the requirement to notify the appropriate authority of private fostering arrangements.

***Section 142: Privacy for children in proceedings***

Section 142 amends Article 170 (Privacy for children involved in certain proceedings) of the Children Order to insert a new paragraph (9A) which provides that entering information on the Northern Ireland Adoption and Children Act Register established under section 144 of the Adoption and Children Act (Northern Ireland) 2022, or permitting persons to search and inspect that register, in accordance with any regulations made under section 149 of the Act, will not be an offence under that Article.

***Section 143: Report on the operation of the Children Order***

Article 181 of the Children Order requires the Department, after consultation with the Lord Chancellor, the Department of Education and the Department of Finance, to prepare and lay before the Assembly an annual general report on the operation of the Order. Section 143 amends Article 181 to require a report on the operation of the Order to be completed every 3 years instead of annually. The first report will not be required until 3 years after the date on which the Adoption and Children Act (Northern Ireland) 2022 receives Royal Assent.