FROM THE MINISTER OF HEALTH

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Dear Colm,

I refer to correspondence dated 18 October 2021 from the Clerk to the Committee for Health seeking a written response to the issues raised by stakeholders in their written submissions to the Committee's call for evidence on the Adoption and Children Bill.

I welcome the suggestions, provided by stakeholders, around resources and training, policy and procedures, guidance and any post project evaluation review for the Bill. It should be noted that an outline business case detailing any anticipated costs associated with the Bill has already been approved by the Department of Finance. However, the financial costing exercise will be revisited once the Bill completes its passage and receives Royal Assent. Training will be conducted to coincide with the phased commencement and implementation of the provisions in the Bill.

In relation to other specific comments raised by stakeholders, my Department's responses, as requested by the Committee, are set out in the Annex to this letter.

You will note that I have agreed that my officials should review the policy position in relation to a number of clauses, with a view to deciding whether any amendments should be brought forward during Consideration Stage of the Bill. The relevant clauses are:

- Clause 5 – whether to introduce a duty for adoption authorities (i.e. Trusts) to provide adoption support services assessed as needed in respect of certain categories of people;
- Clause 119 – whether to introduce a duty for Trusts to undertake an assessment of needs for Special Guardianship support services, where requested from certain categories of people;

- Clause 119 – whether to introduce a duty for Trusts to provide Special Guardianship support services which have been assessed as needed in respect of certain categories of people;
- Clause 128 – whether to amend New Article 34DA to state that financial support provided to the former foster carer as part of the GEM Scheme should be "in line with fostering allowances";
- Clause 132 – whether to amend to better reflect that advocacy services must be independent;
- Clause 133 – whether to amend the definition of "harm" to include where a child has been impacted by domestic abuse, even if they have not seen or heard it;

Once this has been completed, the Committee will be advised as to whether I propose to table any subsequent amendments to the Bill during Consideration Stage.

If you have any further queries on the Bill, please contact the Head of the Adoption and Children Bill Team, Julie Stephenson at julie.stephenson@health-ni.gov.uk.

Yours sincerely

Robin Swann MLA
Minister of Health

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Clause 4 – The Adoption Service – duty to provide adoption support services

Issue

Family Routes, and Family Care Adoption Society (FCAS) have submitted written evidence on clause 4 which places a duty on each Trust to maintain an adoption service which must include the provision of adoption support services.

Family Routes has submitted evidence on behalf of the TESSA (Therapeutic Education Support Service in Adoption) project. They are of a view that:

- Adoption support should be designed to provide wraparound support to each member of the family, including adoptive parents and children.
- Currently there is no model for adoption support services in Northern Ireland; this needs addressed with urgency and fairness to ensure every family has timely access to the appropriate services, regardless of Trust location or placing agency location.
- It is crucial to the stability within a permanent placement that families are given support prior to behaviours or emotional challenges arising.
- It should be standard practice that every adopted family in Northern Ireland receive therapeutic support throughout the first year of permanent placement to ensure the foundations are built at the beginning, with an immediate focus on supporting adoptive parents into their parenting journey.
- Adoption support services must be extended to other people to include those playing key roles in an adopted child's life, particularly teachers and educational staff to understand the needs of supporting an adopted child within an educational setting.
- Families should be given the option to avail of their post-adoption support by an independent voluntary service.
- Services must, in the least, be co-provided by social care and the voluntary sector; this will reduce waiting times for families and remove potential barriers of location.

Department's response

The provision of a range of adoption support services is a crucial element of the new statutory framework for adoption support in the Bill. This is based on the recognition that adoptive children and their families are likely to have a range of additional needs, and providing the appropriate support services before and after adoption will minimise placement disruptions and/ or breakdown, and achieves the best outcome for the child.

Under the Bill each Trust will be under a duty to maintain an adoption service which includes the provision of adoption support services. Adoption support services, which must be made available, include financial support, counselling, advice and information. Other support services to be provided will be specified in regulations and it is anticipated that these will include, for example: therapeutic services, services to enable discussions of matters relating to adoption; services to ensure the continuation of adoption relationships; and assistance in relation to arrangements for contact.

The Regulations will also set out which support services must be made available to certain categories of people. For example, we may specify that services to ensure the continuation of adoption relationships must be extended to the adopted child and adoptive parent(s). We may also specify in Regulations that counselling, advice and information should be extended to children who may be adopted, natural parents and guardians, adopted adults, their adoptive parents, natural parents and former guardians, children of adoptive parents, natural siblings of an adoptive child.

The new duties outlined in clauses 5 and 6, which place a duty on Trusts to provide information about the types of adoption support services available in their area, and the right for those affected by adoption to request an assessment for adoption support, will ensure that everyone involved in the adoption process is better informed about what adoption support services are available, their rights and other services on offer.

Under the Bill, it will be possible for Trusts to engage voluntary adoption agencies, registered with RQIA, in the provision of adoption services, including support services. This will enable the Trusts to draw on the extensive expertise in adoption within the registered voluntary sector. An unregistered voluntary organisation may also provide certain adoption support services on behalf of a Trust – these services will be specified in regulations. This will also ensure adoptive families receive the support they require in a timely manner.

The Bill will also enable some adoption functions and services to be undertaken or delivered on a regional basis, by, for example, one Trust on behalf of the region. This could have the benefit of greater efficiency but also greater equity in terms of access to services and consistency in terms of service user experience.

As part of the Bill's implementation, the Department will develop regulations and accompanying statutory guidance which will detail what Trusts must do in relation to adoption support services; these will be developed with stakeholders and subject to public consultation prior to implementation. The Department also recognises the importance of implementing the new framework for adoption support services as quickly as possible. Provision has been included in paragraphs 1 and 2 of Schedule 4 (Transitional and Transitory Provisions and Savings) to the Bill to enable the Department to bring forward Adoption Support Services Regulations at the earliest opportunity and in advance of the commencement of other provisions in the Bill.

Issue

FCAS submitted evidence on behalf of two of their sub-groups: the Life Story Project and the Young Advocates Group.

The Life Story Project Group was of a view that:
"The provision of Adoption Support Services should include the duty to provide a Life Story service for children who have been adopted, are in care, leaving care or have left care, where it has been assessed as a need. This would bring our legislation in line with that in other parts of the UK."

Likewise, the FCAS Young Advocates Group commented that there should be statutory provision of Life Story Work made available to all care experienced young people in Northern Ireland, and that this work should be delivered by an independent agency.

Department's response

The Department recognises the vital role that life story work plays in helping looked after children and care experienced young people, including those who have been adopted, to explore and understand their early history and life.

The recently published Strategy for Looked After Children, *A Life Deserved: "Caring" for Children and Young People in Northern Ireland* recognises the importance of preserving children and young people's identity by maintaining a history of the child's life and enabling them to have access to that information when required. It states:
"*Each child in care should have access to life story work to enable them to build their knowledge of their family ties and maintain a link with their wider family circle. For those who have been adopted, they should be supported to access and trace relatives where this is appropriate".*

As part of the Bill's implementation, the Department will issue statutory guidance which will highlight the importance of life story work and detail what should be included in the child's Life Story Book and Later Life Letter. It is also anticipated that new Adoption Agencies Regulations to be made under the Bill will include in the list of matters to be included in the child's Adoption Placement Plan, the dates on which the child's life story book and later life letter are to be passed by the adoption agency to the prospective adopter. The Regulations and guidance will be developed with stakeholders and subject to public consultation prior to implementation.

The Department does not therefore consider that specific provision relating to life story work needs to be included in the Bill.

Clause 5 - Assessments etc. for adoption support services

Eight organisations submitted written comments on clause 5 relating to assessments for, and provision of adoption support services. These issues are responded to in turn below.

Right to request an assessment of adoption support services

Adoption UK welcomed the new right to assessment of need for adoption support services. However, they have raised concerns that clause 5, as currently drafted, does not place a duty on the authority to provide an assessment unless it is requested. They believe that this risks delaying vital support or missing the vital support need by vulnerable young people.

TESSA have also commented that any assessment for adoption support services is completed collaboratively with the adoptive parents, and that families should have the option to access their assessment leading into support and post adoption support, from a voluntary service, to ensure support is accessible, timely, coordinated from an independent organisation, which stands alone from Trust services.

Family Routes have highlighted the vulnerability of birth parents and birth relatives, during the adoption process and the importance of recognising and assessing the support needs for this group of people especially the birth mother.

Department's response

Although the duty placed on Trusts to conduct an assessment of adoption support needs of certain categories of people is by request, it is anticipated that, by way of regulations, Trusts will be required to undertake an assessment of the support needs of the adoptive child, adopters and any child of the adopter when a match is being considered. Such assessment will be key to informing the matching decision and the decision of the prospective adopters as to whether to proceed. It will also be vital to ensuring that the appropriate support continues to be provided during the period in which the child is placed for adoption.

Where support is available post adoption, it is up to the adoptive parents if they wish to avail of these supports. Once an adoption order is made, adoptive parents enjoy the same rights as any other parent and their engagement in any service is voluntary. Likewise, birth relatives have the right to decide whether they wish to avail of any support services that may be available. The Department therefore considers that it is appropriate that any assessments of need should be at the request of individuals only.

To inform such decisions, it is important that individuals know what support services may be available to them and how they can request as assessment of need for such services. The Bill will place a duty on Trusts to provide information on adoption support services available within their area and how such services can be accessed. This is provided for in clause 6 (see TAB 3 below).

The Bill enables adoption services to be provided by registered voluntary adoption agencies, on behalf of Trusts. It is therefore anticipated that individuals will be able to access their assessments through such agencies.

The Department recognises the vulnerability of birth relatives in the adoption process. Birth relatives will be entitled to request an assessment of need for support services and clause 5 places a duty on Trusts to undertake such an assessment, where requested from birth parents and guardians of a child who may be adopted and the natural parents and guardians of an adopted person.

Provision of services assessed as needed

Adoption UK has also raised concerns that clause 5 does not place a duty on an authority to provide the adoption supports services which may be identified following an assessment. Adoption UK believe that the Trusts must be under a statutory obligation to commit to provide services to meet that need, and ring-fenced post adoption support must be secured. They also commented on transparency, and the right to appeal any decision on the provision of adoption support services and have suggested that this should be embedded and provided for in regulations.

Department's response

The requirement in clause 4 for Trusts to make available certain adoption support services, as outlined in TAB 1 above, and the requirement in clause 6 for Trusts to provide information on the adoption support services available within their area, and how an assessment of need for such services can be requested, will demonstrate transparency and a commitment to providing services.

Having undertaken an assessment of needs, it will then be for the Trust to decide whether to provide the support which has been assessed as needed. The Bill does provide a power for the Department, by way of regulation, to specify certain categories of people to whom the Trust **must** provide the support which has been assessed as needed. This could include, for example the adoptive parent or adoptive child.

The Department's reason for providing the power to specify the above requirements in regulations was to allow some initial flexibility by giving Trusts the discretion to decide, in all cases, whether to provide services assessed as needed. We want to ensure that social workers can target valuable resources where they are most needed. Trusts are best placed to decide, on the basis of need and the availability of services locally, whether to provide adoption support and, if so, which services. That is the principle on which most public services, including other social services, are provided.

As part of implementation, the Department will capture and monitor the nature and range of adoption support needs to determine whether, at a future point, to use the new powers to prescribe categories of persons for whom a Trust must undertake an assessment and provide services assessed as needed.

In light of concerns expressed by stakeholders, the Department will reconsider whether this is still appropriate or whether clause 5 should be amended to place on the face of the Bill a duty to provide support where it has been as assessed as needed to specific categories of people.

Individuals will be entitled to raise any issues or make a complaint to their HSC Trust about the adoption support services they have, or have not, received. Clause 130 of the

Bill provides for this. Independent advocacy services will be available to support any child making such representations or complaint – clause 132 refers.

Support Plans

TESSA has referred to the wording in subsection (6) which places a duty on an adoption authority, where they decide to provide adoption support services, or are under a duty to so, in circumstances of a prescribed description, to prepare a plan for the provision of services and keep the plan under review. They believe that the term ***"prescribed description"*** used in subsection (6)(b) is unhelpful and ambiguous which will leave space for interpretation which is not conducive to the fair delivery of services. The term support must be explicit, leaving no room for judgement area.

Adoption UK have expressed concerns that the Bill only provides for a support plan where a child has more than one need. They have stated:

> *"While it is unlikely that any child who has experienced early trauma will have only one need, it does risk some children falling through the net. In addition, given the lifelong impacts of trauma, and the fact that these impacts evolve over time, it is highly likely that a child found to have only one need at the point of assessment will develop multiple needs in the future".*

Department's response

The Department recognises the concerns expressed by TESSA. However, prescription in this context does not relate to the nature of a service but, rather, to the circumstances in which a service is provided. It is anticipated that Regulations will specify that a support services plan will need to be prepared if the proposed services are being provided on a continuous basis. A plan (setting out what will be provided when, by whom and for how long) is unlikely to be required in connection with a request for advice and/or information, or for a one-off service. The reason is that the provision of these services would not require a longer-term plan to be prepared and reviewed. In all other cases, a plan will need to be prepared.

The Department considers that is not necessary to list these circumstances on the face of the Bill and that such detail is more appropriate for Regulations. Also, such circumstances will still be specified in legislation, and also in accompanying guidance. This will ensure that there is no ambiguity. It also enables flexibility to either add to the set of circumstances or, indeed, to remove them.

The Department also agrees with Adoption UK that it is likely that the majority of children will have a number of support needs, or needs not limited to advice or information, requiring a support plan to be prepared. Where any child goes on to develop multiple needs at any point in the future, they and their adoptive parents will be entitled to request a new assessment at any point, so that any needs that were not apparent at the time of the original assessment can be assessed and the necessary support provided.

Adoption Support Regulations

Adoption UK and TESSA have both referred to the regulatory powers in clause 5 which set out the details on adoptions support services. Adoption UK expect, as a minimum the

detail of these regulations to be in line with that of the other UK nations. They also believe it should be mandatory for all service providers to deliver multi-disciplinary assessments and support plans for every child, to be agreed with adopters before placement and reviewed annually.

TESSA have commented if regulations are to make provisions in these areas, it is paramount that voluntary projects who currently deliver therapeutic adoption support are allowed to contribute to this based on beneficiary service user feedback, and they must also be prescriptive to ensure fidelity across services.

Department's response

The operational requirements to give effect to new framework for adoption support services will be explained in further detail in statutory guidance which the Department intends to publish alongside the Regulations. These regulations and the accompanying statutory guidance will be developed with input from stakeholders from both the statutory and voluntary sectors. Consideration will also be given to similar regulations in other UK jurisdictions to ensure there is no disparity between the needs of those affected by adoption within Northern Ireland, compared to their counterparts in other UK nations. The regulations and accompanying guidance will also be subject to public consultation prior to implementation.

Resourcing and Adoption Support Fund (ASF)

Family Routes, BASW NI, Home for Good and the WHSCT have commented on the need for adequate resources to deliver the new framework for adoption support services.

Action for Children have commented on the lack of resources currently to properly support care experienced children and those who care for them and have suggested that there is a need for more sophisticated commissioning which looks at need in the round and facilitates greater local integration of services and that it might deliver some help with existing budgets.

Home for Good and Evangelical Alliance have referred to the Adoption Support Fund in England in their comments. Home for Good have stated:

> *"Although there are improvements to be made to improve the efficiency of support being made available to families through the fund, the fund has made a radical difference in families feeling reassured that support will be there when needed. In addition, as a central fund, the ASF has helped to address the postcode lottery of support, by enabling families to access support on a more equitable basis".*

Department's response

England established the Adoption Support Fund (ASF) in 2015, on a non-statutory basis, to enable adopters to access therapeutic support more easily. The Fund aims to ensure that families' assessed needs receive timely effective support to improve outcomes. It provides funds to local authorities and regional adoption agencies to pay for essential therapeutic services for children who have left the care system through adoption or as a result of a Special Guardianship Order (SGO).

The Department has paid particular regard to the need to properly resource support for ongoing support arrangements for those involved in adoption. We have consulted closely with Trust social workers and the voluntary organisations who currently provide adoption support to ensure that we have taken proper account of the ongoing needs of children and young people, their adoptive parents and birth parents prior to and following the making of an adoption order. The estimated total cost to implement the new framework for adoption support over 3 years will be circa £10.9 million, demonstrating our commitment to providing support services wherever needed. The funding will be ring-fenced for this purpose and, in that respect, is similar to the ASF.

Clause 6 - Adoption support services: duty to provide information

Adoption UK have submitted written evidence in relation to clause 6 which places a new duty on each Trust to provide information about the types of adoption support services available in their area.

Whilst Adoption UK welcomes the duty on Trusts to provide information to prospective adopters and adopters, they are of a view that there must also be a duty on Trusts to provide a rounded package of universal support including training and support groups.

They have also commented that the adopters they surveyed emphasised the importance of ensuring that staff who deliver universal services have the skills and experience to properly support families.

Department's response

The Bill provides that the adoption support services to be provided include counselling, advice and information and also financial support. The Bill also enables the Department to prescribe other services to be provided and it is anticipated that this may include, for example:

- Therapeutic services
- Services to enable discussion of matters relating to adoption
- Services to ensure the continuation of adoptive relationships
- Assistance in relation to arrangements for contact.

The duty which the Bill will place on Trusts to provide information about the types of adoption support services available, will ensure prospective adopters and adoptive parents are better informed about adoption support services, their rights and other services that are available to them, and has the potential to reduce the chances of adoption breakdowns.

Trusts will be able to engage voluntary adoption agencies, registered with RQIA, in the provision of adoption services, including support services, drawing on their extensive expertise. An unregistered voluntary organisation may also provide certain adoption support services on behalf of a Trust – these will be specified in regulations. The Regulations will be subject to public consultation

As part of the Bill's implementation, training will be provided to staff. It is envisaged a number of training packages will be developed which will include specialist training packages to ensure adoptive families are supported.

Clause 19 – Applications for Placement Orders

The Law Society of Northern Ireland has sought clarity on whether applications for Special Guardianship Orders and Placement Orders will fall under private or public law applications for the purpose of access to legal aid funding.

The Society recommends that consideration be given to the challenges for some people of funding applications otherwise the concept and intentions of the legislation may be frustrated, resulting in an adverse impact on the child/children.

The Society also asked about the interplay between Placement Orders and Special Guardianship Orders and pointed to the possibility of a parent withdrawing their consent to adoption, which could result in a number of difficulties.

Department's response

A Placement Order will be a public law order that can only be applied for by a HSC Trust seeking authorisation to place a child for adoption. The cost of applications will be met by Trusts.

Schedule 3 to the Bill includes provision to make consequential amendment to the Access to Justice (NI) Order 2003 (the 2003 Order) to ensure that existing legal aid arrangements for adoption proceedings under the Adoption (NI) Order 1987 will continue to apply to any adoption proceedings under the Bill. Any legal aid sought, for example, by a birth parent seeking to oppose an application for a placement order would be subject to the merits criteria and means testing as set out in the 2015 Regulations made under the 2003 Order.

Special Guardianship Orders (SGOs) will be a new private law order; a HSC Trust will not be able to apply for such an order. The relevant provision which introduces SGOs will be inserted into the Children Order. As a result, the existing legal aid arrangements for proceedings under the Children Order will continue to apply and will include SGO proceedings. The existing merits criteria and means testing as set out in the 2015 Regulations made under the 2003 Order will apply.

The Department anticipates that where an application for an SGO relates to a looked after child and the prospective Special Guardian is not eligible to receive legal aid, then depending on the individual circumstances of the case, HSC Trusts may meet the legal costs arising from the application as part of its Special Guardianship support provision, if not to do so would jeopardise a permanence arrangement that is in a child's best interests. There is also an intention to provide a one-off payment to prospective Special Guardians of looked after children to enable them to seek a legal consultation prior to applying for an SGO.

In terms of the interplay between Placement Orders and SGOs, the Bill treats the two different types of orders separately in legislative terms.

Under the Bill, where a child has been placed for adoption with the consent of their parent(s), the parent can then withdraw their consent at any time prior to the making of an application for an adoption order. Where consent is withdrawn whilst the child is placed for adoption with prospective adopters, the Trust will then need to decide whether to return

the child to their parent or guardian, or whether the child should remain in care and whether adoption is still in the child's best interests. If adoption is still the plan and the Trust proceeds with an application for a Placement Order, new Article 14A(6)(a) provides that, as part of such Family Proceedings, the court may make an SGO if an application for such an order has been made by a person who is entitled to do so or have obtained the leave of the court to make the application.

If however the Trust decides that adoption is no longer the plan, but the child should remain in care, the Trust will need to apply for a Care Order. As part of those care proceedings, new Article 14A(6)(b) provides that the court may, of its own volition, make an SGO even though no such application has been made.

Clause 23 – Contact
Clause 49 – Post adoption contact

Issue

Family Routes has noted that contact is one of the most sensitive and challenging areas to negotiate for all parties and requires high levels of appropriate resource and attention to the needs and understanding of all participants.

Department's response

The Department recognises the challenges inherent in balancing the needs of all parties where contact is concerned, and costings drawn up for the Bill have taken account of the resources necessary to underpin contact, including assessment, court time and legal representation, and social work time to support the facilitation of contact. Costings have also taken account of the need to support looked after children through the court process for contact orders during placement for adoption via the Children's Court Guardian.

The welfare checklist under clause 1 of the Bill will apply, where an adoption agency must have regard to, among other things, the child's ascertainable wishes and feelings when making decisions about contact. This will be reinforced by regulations, which will also require the adoption agency to take account of the wishes and feelings of the parent or guardian of the child when making decisions regarding contact.

Issue
Adoption UK has submitted written evidence in relation to clause 49, post adoption contact. The adopters Adoption UK surveyed have raised concerns about the provision to allow a child to visit 'or stay with' a person who is named in the adoption order. This provision would appear to undermine the adoptive parents' authority to decide what is in the best interest of their child, raising the issue of parental responsibility.

Department's response

Contact between adopted children and their birth families can be beneficial, however, any form of contact will require careful planning and support, especially as a child's view and their need for contact may change over time. The arrangements which tend to have the best chance of success are those which are mutually agreed between the adoptive parents and birth families.

It is therefore anticipated that arrangements for contact post adoption will continue to be agreed informally under the Bill. In most cases, such arrangements work well. However, in some cases, unsolicited, harmful and disruptive contact can occur between an adopted child and their birth relatives. It is therefore important to provide effective recourse to the courts for the adoptive family.

When making an adoption order, or afterwards, the court will be able to make a further contact order, requiring an adoptive parent to allow the child to have contact with their birth family or prohibiting contact, depending on the child's best interests.

Once an adoption order has been made, the birth parents, birth relatives, for example grandparents or siblings, or any other person connected to the child, will no longer have a right to apply for a contact order without the leave of the court.

An adoptive parent will be able to apply for an order prohibiting contact, without the leave of the court, to stop unwanted unsolicited and potentially harmful contact with the child, or to prevent such contact happening. A child may also apply for such an order and will not need the leave of the court to do so. Both the adoptive parent and the child may also apply to the court to have an order, which the court has put in place, varied or revoked.

It is envisaged that the making of these orders will only be necessary in exceptional circumstances, i.e. where unsolicited harmful attempts for contact by birth relatives have been made, or the adoptive parents do not comply with previously agreed contact arrangements. The policy intention is to protect the stability of the adoption, to reduce the disruption that inappropriate contact can cause and to protect the child's right to maintain contact with their birth family where it is in the best interests of the child to do so. These new arrangements will be more compliant with Article 8 of the ECHR as it provides for the protection of the child's right to private and family life i.e. by maintaining contact with birth family by way of an order for contact during placement for adoption; and also by protecting the child's life with his/her adoptive family, by way of a post-adoption no contact order, if necessary.

Underpinning this, the Bill will empower a young person to make or influence decisions about contact. The child will be able to apply to the court for an order either allowing, or preventing, contact with birth relatives and to apply for such an order to be varied or revoked. Such powers are not currently available to a child under the existing adoption framework.

Clause 59 - Disclosure of Information to Adopted Adults

Family Care Adoption Society (FCAS) submitted written evidence on clause 59 on behalf of members of two of its sub-groups: the Life Story Project and the Young Advocates Group.

Clause 59 relates to adoptions which take place after the commencement of the relevant provisions of the Bill. It provides that an adopted person has the right, on reaching age 18, to receive from the appropriate adoption agency any information that would enable them to obtain a copy of their birth certificate, any prescribed information disclosed to the adopters by the agency under clause 53 and, from the court which made the adoption order, a copy of prescribed papers relating to the adoption.

The Life Story Project is concerned that the provision applies only to adopted persons aged 18 or over. In their view, if the child's welfare is to be the paramount consideration, children who are in care, leaving care or have left care should have access to their family history and journey through care before the age of 18:
"*Having no access to background information can negatively affect a child's mental health, placement stability and self-esteem. Life Story provision addresses this need in a safe and age-appropriate way, providing support to both young person and parent/ carer*".

Likewise, the FCAS Young Advocates Group commented that it is a child's right to have information about their life before the age of 18.

Department's response

The provisions in the Bill relate only to the disclosure of information, for life story work or otherwise, where a child has been adopted. The Bill will therefore have no impact on access to information for the purposes of conducting life story work with looked after children or care leavers who have not been adopted. This will continue.

As outlined in TAB 1, the Department will issue statutory guidance which will highlight the importance of life story work and detail what should be included in the child's Life Story Book and Later Life Letter. It is also anticipated that new Adoption Agencies Regulations to be made under the Bill will include in the list of matters to be included in the child's Adoption Placement Plan, the dates on which the child's life story book and later life letter are to be passed by the adoption agency to the prospective adopter. These regulations will be made using a number of powers provided in the Bill, including the power in clause 53 which enables the disclosure by adoption agencies of prescribed information to prospective adopters. The Regulations and guidance will be developed with stakeholders and subject to public consultation prior to implementation.

It is anticipated that guidance will state that the information contained in the Life Story Book needs to be given to the child at a time when they are emotionally able to cope and understand the information. It is expected that the adoptive parents will share the Life Story Book with the adopted child when they consider it appropriate to do so.

If the Life Story Book is not provided to the child by the adoptive parents, then clause 59 enables the child, on reaching age 18, to request from the adoption agency all information, including the Life Story information, which was provided to the adoptive parents.

Clauses 55 to 64 of the Bill only apply in respect of adoptions which take place after the commencement of those clauses i.e. the appointed day. For adoptions which took place before the appointed day, the existing Adoption Agencies Regulations (NI) 1989, under which Life Story Book information is currently prepared and provided, will continue to apply.

In summary, therefore, the Bill's provisions on disclosure of information are not intended to override or limit the sharing of information as part of life story work either with adopted children, looked after children or care leavers. Every child will have a right to full information in their life story book, and where a child has been adopted, this will include identifying information about a range of people in their life prior to their adoption.

Clause 67 – Adoptive relative & Clause 158 – Interpretation

NIHRC is the only organisation which has referred to clause 67 which sets out the meaning of an adoptive relationship in law, and clause 158 which defines the meaning of a couple to include same-sex couples. They have recommended that the Bill outlines in detail specific measures to be taken to ensure non-discrimination against same-sex couples and individuals in the adoption process. The Commission recommends that clear and comprehensive revised guidance is issued and effectively publicised by the Department outlining the current state of the law for the benefit of those involved in the adoption process, either as employees or as prospective adoptive parents.

They have also highlighted the LGBTQI+ Strategy Expert Advisory Panel – Themes and Recommendations, which recommends that LGBTQI+ people have equal access to apply to adopt or foster. This report does not mention any issues or barriers faced by LGBTQI+ people when applying to adopt or foster.

NIHRC has also referred to guidance issued by the Department following the Court of Appeal judgment in 2013, and are pleased that the Bill aims to establish the position by consolidating statute. By reforming the 1987 Order and amending the eligibility for making adoption orders to enable one person or a couple (who are married, civil partners or two persons, living as partners in an enduring family relationship) to apply to adopt, the Bill will implement the judgement and accord with Articles 8 and 14 of the ECHR.

Department's response

Following the Judicial Review of the then current Adoption Law and Guidance brought by the NIHRC in 2012 and 2013, same sex and unmarried couples have been eligible to apply to an adoption agency to be considered as potential adopters.

In January 2020, the Adoption (Northern Ireland) Order 1987 (the 1987 Order) was amended by the Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019. This amendment brought the 1987 Order into line with the judgements from the Judicial Review.

The current law on who can apply to adopt has been carried through in the Bill under clauses 46 to 48; this will ensure adoption legislation continues to be compliant with Human Rights and Equality legislation. Under current legislation, applications can be made by both single people and couples. That includes married couples or civil partners or two people living as partners in an enduring family relationship. Applications can be made by men or women, including those in same-sex relationships.

Eligibility to apply to adopt and suitability to adopt are very different things. Prospective adopters are currently, and will continue to be, subject to a rigorous assessment process to ensure that only persons capable of providing a loving, safe and secure home are approved to adopt. The welfare of the child will always be the overriding consideration.

The matters to be taken into account when determining whether a person is suitable to adopt a child will be set out in Regulations. These Regulations will be subject to public consultation prior to their commencement.

Following the Judicial Review of the then current Adoption Law and Guidance brought by NIHRC in 2012, and 2013, the Department issued guidance to the HSC Trusts and adoption agencies in respect of the new eligibility to apply to adopt criteria and these have been applied since. The HSC Northern Ireland Adoption and Foster Care Service states on their website:

"We welcome adoptive applicants from all races, religions, languages, cultures, genders disability, ages and sexual orientation. Each application will be considered with the happiness and well-being of the child and the applicant at heart. All status is accepted, whether individual, married, in a civil partnership, or living with a partner, non-married couples and same sex couples may apply. Gender or sexuality spectrum will not impact an application to adopt."

During 2019/20:

- Of the 111 children adopted from care, 11 were adopted by a same sex couple.
- Of those who adopted children from care, 10% were same sex couples.
- Of the 120 domestic adoption applications received for an adoption assessment, 18 applications were received from co-habiting same sex couples.

As part of the Bill's implementation, statutory adoption guidance will be produced by the Department, in consultation with key stakeholders. It is anticipated that this guidance will clearly set out who is eligible to apply to adopt. It is unclear whether NIHRC is recommending changes to existing guidance based on current law is required. The Department will pick this up directly with NIHRC.

Clause 113 - Avoiding Delay

BASW and Home for Good have submitted written evidence in response to clause 113 which places an obligation on the court to draw up a timetable and give directions to ensure the timetable is adhered to in order to resolve adoption cases without delay.

Whilst BASW welcomes the setting of timescales, obliging courts to draw up timetables, they are of a view that consideration should be given to what measure can be utilised if timescales are not met.

Home for Good also welcomed the provisions in clause 113. They recognised the importance given to ensuring that no child is waiting unnecessarily but want to emphasise that this should be held in tension with ensuring that the strongest match is found for the child. They have therefore recommended that the Bill is amended to reflect the aim of timely matches for children should be held in balance with ensuring the strongest matches are made and that children are matched with the right family who have the best chance of meeting their needs.

Department's response

In order to tackle the problem of unnecessary drift and delay within the current adoption process, the Bill will introduce a statutory principle that, in general, delay is likely to prejudice the child's welfare, and places a duty on both the court and adoption agencies to bear this in mind at all times.

The aim of this principle and the requirement for courts to draw up timetables for resolving adoption cases without delay, is to reduce the drift and unnecessary delay that prolongs instability for children and families when adoption would be in the child's best interest.

The detail in relation to the requirement on the courts to draw up timetables for resolving adoption cases without delay will be set out in the Rules of Court and it is anticipated that these may prescribe periods within which steps must be taken so as any unnecessary delays can be prevented. Statutory guidance will also be developed and will set out the importance of keeping to the court's timetable so that there is no delay for the child.

Although the court and adoption duty are under a duty to bear in mind the statutory principle of no delay in adoption decision making, the welfare of the child is paramount in all decision they make. The court and the adoption agency are therefore under a duty to ensure a child is matched with the right family who is best placed to meet their needs and provide them with a loving and stable family home and to deal with each child's case in a timely way. One should not be delivered at the expense of the other.

Therefore, the Department does not anticipate that the duty to reduce unnecessary delay will have any impact on the placement of children with the correct family, as the welfare of the child must be paramount through the adoption process. The Department also considers that the current robust matching process which Trusts undertake will not be impacted by also ensuring that such decisions are undertaken on a timely basis. We are therefore of the view that no further amendment to the Bill is required. Consideration can be given to reflecting this in guidance.

Clause 116 - Definition of family proceedings

NICCY welcomed the proposal to ensure that Female Genital Mutilation Protection Orders are included in the list of "family proceedings" for the purposes of the Children Order to ensure that all relevant orders for the protection and welfare of a child can be made within the proceedings. The organisation added, however, that the Committee may wish to consider how the full range of harmful practices, as set out by the UN Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, is being addressed in Northern Ireland.

Department's response

Although the Bill does not make provision in relation to the full range of harmful practices against women and children, the Department is fully supportive of the joint general recommendation of the UN Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child on harmful practices, i.e. female genital mutilation, child and/or forced marriage and crimes committed in the name of so-called honour.

The Department's policy on safeguarding children from the harmful practices of FGM, forced marriage and so-called honour based violence is set out in Chapter 7 of *Co-operating to Safeguard Children and Young People in Northern Ireland*.

In relation to female genital mutilation, in 2014 Multi Agency Practice Guidelines on Female Genital Mutilation were issued by the Department of Finance for those working in clinical, medical, nursing, midwifery and AHP practice. DoH is currently updating the Multi-Agency guidelines. The revised document will take account of new care pathways and a risk assessment tool launched by the Safeguarding Board for Northern Ireland in 2018 and will provide guidance for social services. It is anticipated that the revised guidelines will be published in 2022.

As most cases of historical FGM are from women presenting to maternity services, separate guidance is being developed by the Department for midwifery staff. Furthermore, DoF is bringing forward a new Order that will enable HSC Trusts to be named as 'relevant third parties' in relation to FGM Protection Orders. This will enable Trusts to apply for FGMPOs for girls at risk without first seeking leave from a court.

In relation to forced marriage, all agencies with responsibility for safeguarding and promoting the welfare of children are required to comply with The Right to Choose: Statutory Guidance for Dealing with Forced Marriage published by the Department of Finance to protect persons from being forced into marriage against their will. This guidance is designed to assist with the operation of the Forced Marriage (Civil Protection) Act 2007 and to ensure that the protections which the Act offers are widely promoted in Northern Ireland. The High Court or a County Court may issue a Forced Marriage Protection Order (FMPO) to protect a person from being forced into a marriage or from any attempt to be forced into a marriage or a person who has been forced into a marriage.

In relation to honour-based violence, *Co-operating to Safeguard Children and Young People in Northern Ireland* advises organisations, agencies and practitioners, where they suspect or believe that a child or young person is at risk of this harmful practice, to take action commensurate with the perceived level of risk. Where it is known to have taken place with children or adults, they are advised to pass this information to the HSCT and/or the PSNI to ensure that other children within the community affected are appropriately safeguarded.

Clause 119 - Special Guardianship Orders (SGOs)

Eight organisations submitted written comments on the Bill's provisions on SGOs, in clause 119. In particular, views were expressed in relation to: the residency requirement for those applying for an SGO; the importance of taking into account the wishes and feelings of children and young people; Special Guardianship suitability assessments; and support and resources for SGOs. These issues are responded to in turn below.

Residency requirement

VOYPIC stressed that regulations and guidance must make clear that the period of one year must be seen as the minimum residency requirement prior to making an application for an SGO and not taken to be common practice.

Department's response

Clause 119 is clear when referencing the residency requirement for an SGO application that one year is the minimum period for which a child must have lived with a special guardian before an SGO can be applied for.

In addition, however, the Department intends to emphasise in statutory guidance the importance of ensuring that a child and prospective special guardian have been living together long enough to enable the Trust conducting the suitability assessment and the court to determine whether an SGO would be in the child's best interests.

Wishes and feelings of children and young people

VOYPIC recommended that children and young people should have access to an independent advocate to explore and, where required, represent their wishes and feelings in advance of an application to the court for a SGO. BASWNI also said that the wishes and feelings of children will be important.

Department's response

The Department is mindful of the need to ensure that, before an SGO order is made, a child or young person should have the full opportunity to express their wishes and feelings about the proposed arrangement.

In the case of all SGO applications, a Trust will be required to conduct a detailed suitability assessment of the proposed arrangement and provide a report to the court. The Department intends that regulations to be made under the Bill will require the social worker, as part of this process, to listen to the child's wishes and feelings on a range of matters and to take these into account when determining suitability.

Subject to views expressed during consultation, the Department intends for the most part to mirror the Special Guardianship Regulations 2005 for England. Paragraph 1(3) of the Schedule to these Regulations requires the court report to include:

"3. In respect of the wishes and feelings of the child and others—

(a) an assessment of the child's wishes and feelings (considered in light of his age and understanding) regarding—

(i) special guardianship;
(ii) his religious and cultural upbringing; and
(iii) contact with his relatives and any other person the local authority consider relevant, and
(iv) the date on which the child's wishes and feelings were last ascertained".

In addition, up until the point at which an SGO is made in respect of a looked after child, the Trust caring for them will be bound by the corporate parenting duty at clause 123 to have regard to the need, when carrying out functions in relation to the child, to encourage them to express their views, wishes and feelings and to take these into account.

In terms of independent advocacy provision, looked after children and young people in relation to whom an SGO has been applied for, will continue to be eligible to make representations, including complaints, about the discharge of the Trust's functions in relation to them during the period before an SGO has been made. This will mean that children and young people wishing to complain, for example, that their views about a proposed SGO arrangement have not been properly sought or taken into account by a Trust, would have an automatic right to receive advocacy support throughout the process under clause 132 of the Bill. Children who are not looked after before an SGO is made would also be eligible to make representations and to receive advocacy support in relation to such a complaint, if the child is known to social services. Once an SGO is in place, clause 130 extends the right to make representations, including complaints, under the Children Order to all children in respect of whom an SGO is in force, whilst clause 132 entitles this category of children to advocacy services.

As a further measure, clause 119(2) amends Article 3 of the Children Order to add SGOs to the list of circumstances where a court must have particular regard to the matters in the welfare checklist. That checklist requires a court to have particular regard to, among other things, "*the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)*". This duty applies within the context of the broader requirement that for courts, when determining any question with regard to the upbringing of the child, their paramount consideration must be the welfare of the child.

Where an SGO is applied for in relation to a child who is subject to a care order, the child will have a Children's Court Guardian (CCG) appointed from the point at which the application is made. The role of the CCG will be to represent the child's interests during proceedings, keeping them informed and representing their wishes and feelings where required.

Special Guardianship assessments of suitability

BASWNI recommended that careful thought be given in regulations and guidance to how assessments for SGOs are conducted and how decisions will be made. They expressed a preference for a single permanence panel for decision-making in Trusts as opposed to separate specialist panels for fostering, SGO and adoption. They felt single permanence panels would encourage a more holistic assessment of all the options, which a court would want to see in the application for any order.

The Fostering Network represented the concerns of foster carers, who queried whether they would be expected to undergo further assessment if they decided to take an SGO for a child they had been caring for already.

Department's response

The detail of assessments will be set out in regulations and accompanying guidance. For example, regulations will prescribe the matters that must be covered in the court report that a Trust must prepare prior to SGO proceedings, assessing the suitability of the proposed special guardianship arrangement. Regulations will also establish the arrangements for a panel review of SGO reports in relation to looked after children.

The operational requirements to give effect to the legislation will be explained in further detail in the statutory guidance which the Department intends to publish alongside the Regulations.

It is anticipated that, in light of the long-term commitment required in Special Guardianship, foster carers will be required to undergo assessment of whether the proposed Special Guardianship arrangement is in the child's best interests and whether they are suitable to act as special guardians up until the child is 18. The detail of what an assessment must entail will also be set out in regulations and in accompanying statutory guidance. In cases where a foster carer has looked after the child for a long time, there will already be substantial evidence from previous looked after children and foster carer reviews in relation to how effectively the placement meets the child's best interests and any additional support that may be required to support the placement. In such cases, the assessment will draw on information already known about the foster carer and the nature of their relationship with the child.

It is worth noting that permanence planning for each looked after child is an ongoing process within Trusts. From an early stage, consideration is given to the placement that would be in each individual child's best interests, depending on their needs and circumstances. That will continue to be the case, with Trusts considering special guardianship as a permanence option, as part of that process.

As SGOs are a private court order, ultimately it will be for a child's carer rather than a Trust to decide whether an application for an SGO should be made. Where a carer applies for an SGO, the Bill places a duty on a Trust when preparing a suitability report to consider the full range of permanence options that have been considered to ensure that Special Guardianship is the best option for child.

It will be a matter for Trusts to determine how they wish to configure panels and there is nothing in the Bill to prevent them from operating combined panels (to cover consideration of different types of placement) or joint panels (where one Trust operates a panel on behalf of another Trust). Each Trust will have the flexibility to decide, as long as the requirements of the relevant regulations are met.

Special Guardianship support and resources

The NSPCC and VOYPIC have recommended that eligibility for special guardianship support should be provided for on the same basis as adoption support. Family Routes have stated that sufficient resource and effective process will be required if the intent of the provision is to be achieved.

NICCY and Fostering Network referred to the need for sufficient support services and financial help for carers and children and young people to meet their ongoing needs after an SGO has been made.

Home for Good has called for sufficient support for special guardians in navigating contact arrangements and the relationship with a child's birth parent(s), particularly where the special guardian is a birth family member.

Department's Response

It is anticipated that in all cases where an SGO is applied for, whether or not the application relates to a looked after child, the support needs of the child and prospective Special Guardian will be assessed and a plan for addressing those needs provided as part of the detailed suitability report that Trusts must provide to the court in respect of all SGO applications. This will include any arrangements and/or support that will be required to facilitate contact between the child and members of his or her family.

Once an SGO is in place, the following persons may request an assessment of needs for Special Guardianship support services: a child with respect to whom a SGO is in force; a special guardian; a parent and any other person who falls within a prescribed description. Under the Bill as drafted a Trust is not under a duty, on receipt of such a request, to carry out an assessment. However, a power is provided for the Department to prescribe in regulations persons and/or circumstances where the authority will be required to do so.

Our intention is to prescribe in regulations under the Bill a duty on Trusts to conduct an assessment if requested by a child/young person, Special Guardian or parent(s). This would be consistent with the approach taken in England under regulation 11 of the Special Guardianship Regulations 2005. However, in light of concerns expressed by stakeholders, the Department is open to considering an amendment to place the duty to conduct an assessment for these categories of people on the face of the Bill. This would be broadly consistent with the approach being taken under clause 5 of the Bill in relation to assessments of need for adoption support services.

Once an assessment of needs has been undertaken, the Bill provides that the Trust will decide whether to provide the support which has been assessed as needed. There is, however, a power to specify that certain categories of people must be provided with special guardian supports where assessed as needed. The latter is consistent with the approach being taken under the Bill for the provision of adoption support services.

The Department's reason for providing the power to specify the above requirements in regulations was to allow some initial flexibility by giving Trusts the discretion to decide, in all cases, whether to undertake an assessment of needs and whether to provide services assessed as needed. As SGOs and related support will be a new permanence pathway for Northern Ireland, it is difficult to predict the extent to which they will be sought and the support needs of those who seek them. We want to ensure that social workers can target valuable resources where they are most needed. Trusts are best placed to decide, on the basis of need and the availability of services locally, whether to provide special guardianship support and, if so, which services. That is the principle on which most public services, including other social services, are provided.

As part of implementation, the Department will capture and monitor the nature and range of Special Guardianship support needs to determine whether, at a future point, to use the new powers to prescribe categories of persons for whom a Trust must undertake an assessment and provide services assessed as needed.

In light of concerns expressed by stakeholders, the Department will reconsider whether this is still appropriate or whether clause 119, Article 14F(5) should be amended to place on the face of the Bill a duty to provide support where it has been as assessed as needed to specific categories of people.

Individuals will be entitled to raise any issues or make a complaint to their HSC Trust about the special guardianship support services they have, or have not, received. Independent advocacy services will be available to support any child making such representations or complaint. It is also expected that panel arrangements established to consider SGO reports in respect of looked after children provided by HSC Trusts will consider the support needs of applicant special guardians and assess plans by Trusts to meet them.

The Department has paid particular regard to the need to properly resource support for ongoing support arrangements for those involved in a Special Guardianship arrangement and we have consulted closely with local Trust officials and local authorities in England which currently provide Special Guardianship support to ensure that we have taken proper account of the ongoing needs of children and young people, their Special Guardians and birth parents following the making of an order. The estimated total cost to implement SGOs over 3 years will be circa £3.9 million, demonstrating our commitment to providing support services wherever needed.

In terms of contact arrangements in particular, we are conscious that a significant proportion of Special Guardianship arrangements are likely to involve family and friends, with the potential need, in some cases, to manage complex relationships. Based on our consultation with Trust officials and with local authorities in England, we have included in our estimated costings a substantial amount for ongoing support of contact arrangements, taking into account travel costs and in some cases the need for professional support.

Clause 121 - Provision of services to children in need, etc.

Short Breaks

One part of this clause amends the Children Order to enable Trusts to provide accommodation for a disabled child, for the purpose of providing short breaks, without making the child looked after. This clause contains a power for the Department to prescribe, by way of regulations, other categories of children to whom such short break accommodation may be provided, outside of the looked after children system.

The Fostering Network and NSPCC recommend that consideration should be given to defining further other categories of children to which this provision could relate.

NSPCC also recommends that there should be ongoing engagement with key stakeholders in the development of regulations relating to "other categories of children" to ensure that all groups of children who require this support are included to be able to access it.

The NIHRC recommends that "the Department of Health allocate appropriate resources to ensure the availability of short break services across all Trust areas. Statutory guidance should be developed to ensure consistency and promote accountability. Guidance should be produced in consultation with children with disabilities, their parents and guardians, carers and any other relevant stakeholders."

Department's response

The Department will issue robust statutory guidance which will assist Trusts to decide whether to provide a disabled child with short breaks outside of the care system or whether the child's needs are such that the child should be looked after for the duration of the short break. Guidance will also stipulate the safeguards that must be put in place for disabled children availing of short breaks outside of the looked after system.

The Department will undertake further consultation before proceeding to make any regulations to extend this to any other categories of children. Stakeholders will be given the opportunity to put forward their views as part of that process.

The wider issue of resources for short breaks is not within the scope of the Bill. The comments made by the NIHRC have been noted and it is recognised that there are many challenges in relation to the provision of short break care and that there is a pressing need to increase the range of residential and community based short breaks options for families.

The HSCB has developed a draft Regional Framework for Children's Disability Services, which proposes a new overarching model of care for children with a disability in Northern Ireland. The draft framework outlines a new model of practice based on the principles of: (i) early intervention; (ii) collaboration and multi-agency working; (iii) co-design and decision making with families; and (iv) person centred care.

Removal of restriction on making of cash payments

Clause 121 also amends Article 18(6) of the Children Order to provide that the restriction on the making of cash payments to children in need and their families only in exceptional circumstances is removed. In deciding whether to make any such cash payments, Trusts will be required to have regard to any statutory guidance provided by the Department.

NICCY would like to see the practical implementation of this clause to result in commissioning of voluntary children's services (with suitable monitoring) to provide services and support where HSC Trusts are otherwise unable to do so.

Department's response

This provision relates to the provision of cash directly to families to enable them to use the cash as they require. Article 18(5)(a) of the Children Order already provides that "every authority shall facilitate the provision by others (including in particular voluntary organisations) of services which the authority has power to provide by virtue of this Article".

In relation to cash payments made under Article 18(6), by placing a requirement on Trusts to have regard to any guidance provided by the Department, the intention is to ensure a more consistent approach by Trusts in making such payments and to put in place arrangements for monitoring.

Clause 122 – Duty of authorities to promote educational achievement and prevent disruption of education and training

Duty, when providing a child with accommodation, not to disrupt their education

Fostering Network has advised that, at its Foster Carers Education Forum, participants shared concerns about this provision in that some children actually thrive better when they are no longer attending the same school in the same community where they experienced traumatic events. Each decision taken needs to ensure the needs of the child are paramount and a trauma informed approach is central to this.

Departmental response

Article 27(8) of the Children Order already requires a Trust to secure, **so far as is reasonably practicable and consistent with the child's welfare**, that the accommodation is near the child's home and, where the Trust is also providing accommodation for a sibling of the child, to secure that they are accommodated together.

In making this amendment, the words "so far as is reasonably practicable and consistent with the child's welfare" will also apply to securing that the child's education or training is not disrupted. The child's needs will continue to be the paramount consideration and the welfare of the child should inform any decision in relation to a change of school.

Duty to promote educational achievement

Fostering Attainment and Achievement (FAA)

The Fostering Network has advised that it has delivered the FAA contract on behalf of the HSCB since 2018. FAA is designed to improve educational outcomes for children living in foster care. As such Fostering Network is concerned to ensure that there is continued access to such provision which provide direct resources to young people and support foster carers to support their child navigate the education system.

Fostering network has also advised that foster carers strongly supported the need for services such as FAA which make tailored provision for individual children in foster care. They also felt this type of provision should be extended to children on care orders at home, in supported lodgings and in residential care.

VOYPIC also raised this issue, expressing concern that young people in residential care do not have consistent access to the internet nor have access to the same financial support and educational assistance as young people in foster care through the Fostering Attainment and Achievement scheme.

Departmental response

The FAA is a non-statutory service provided by the Fostering Network and commissioned by the HSC Board. The current service is available for children and young people living in foster care and foster carers. Support can begin six months prior to starting primary school and can continue until age 18.

The Department notes the views of stakeholders. However, as a non-statutory service, any decision as to whether the FAA should be extended to looked after children and young people in other accommodation settings would not require a legislative amendment. This is something the Department is willing to consider, particularly in relation to children cared for at home. Broadly equivalent support is available to children in residential care and, in line with commitments in the Strategy for Looked After Children, the Departments of Health and Education will continue to work together and in partnership with others to ensure that all looked after children in education are provided with tailored support.

In relation to the issue of internet access in residential care, one of the Commitments to Action in the Looked After Children Strategy is to ensure that all children's homes have access to the internet.

Duty should be extended to former looked after children

Adoption UK has stated that the new requirement for authorities to promote a child's educational achievement must be extended to formerly looked after children and include measures to support their wellbeing and attainment in school.

Action for Children also agreed, stating that the duty to promote educational attainment is important but this is not something that HSC Trusts can achieve without assistance from the Education Authority and schools. This suggests a need for a corresponding duty for the Education Authority and schools.

Departmental response

When a child or young person under the age of 18 leaves care, for example, to return home to family or as a result of a Residence Order, Special Guardianship Order or Adoption Order, the Trust ceases to have any parental responsibility for the child. Parents either resume full parental responsibility or share it with the Special Guardian or the person named in a Residence Order, or adoptive parents assume full parental responsibility for the child.

The Department therefore considers that it would not be appropriate to extend the duty on Trusts to promote educational achievement to former looked after children, on the basis that, as they no longer have any parental responsibility, they would not be able to fulfil such a duty. Where a child of compulsory school age leaves care, the Department would be of the view that any responsibility to promote their educational achievement would be a matter for the Education sector.

The Department previously considered whether the duty to promote educational achievement should be extended to include former looked after children and we proposed that a duty should be placed on the Education Authority to provide information in order to promote the educational achievement of former looked after children. This would be similar to a duty which applies in England, under section 23ZZA of the Children Act 1989. That duty applies to a local authority, on the basis that a local authority in England has responsibility for education (in addition to social care). However, at that time (2019), the Department of Education (DE) was not willing to agree to such a duty in the absence of a Minister to agree to such a policy change. We have raised the issue again with DE and have been advised that DE's policy is to remain, for the time being, focused on children

who are currently looked after. However, they have indicated they will undertake a scoping exercise on the impact of such a policy change in the longer term and will engage with this Department on the detail of such an exercise.

Corresponding duty should be placed on Education bodies

Home for Good has recommended that the Bill should include a duty on educational bodies, including schools, to ensure that teaching staff and other professionals within these environments are robustly trained on the impact of trauma and attachment needs.

Fostering Network is of the view that, as formal education remains the responsibility of the Department of Education and not Health, there is a need to ensure budgets can adequately meet the level of need which this provision will elicit. It suggests the Children's Services Co-operation Act is a mechanism to facilitate development of provision in education.

Departmental response

The Department considers that legislative provision in the Bill is not required in order to address these issues.

As highlighted by Fostering Network, the Children's Services Co-operation Act (NI) 2015 (the CSCA) already places a duty on children's authorities to co-operate with each other and with other children's service providers, for the purpose of improving the well-being (including the learning and achievement) of children and young people in NI. It also enables the sharing of resources and the pooling of funds for that purpose.

The joint DE / DoH Looked After Children Strategy also sets out a number of relevant Commitments to Action, including to:

- Develop an effective multi-agency approach to improve educational outcomes;
- Build capacity within education on trauma and attachment – understand the impact of trauma and the importance of key adults;
- Enhance access to support, resources and training for schools and for institutions providing initial teacher training to help them become trauma and attachment aware;
- Develop a framework to outline quality provision for looked after children in schools; and
- Review the effectiveness of looked after children-targeted funding provided through the Common Funding Scheme to schools and, if effective, consider extending to other groups

Good progress is being made against these actions. A multi-agency group, co-chaired by the Department of Education and the Department for the Economy, has been established to consider attainment and progression in education and into employment for looked after children and care leavers. The overall aim of this group's workplan is to ensure consistency and equity for looked after children and care leavers in the education system and ETE opportunities post-compulsory education.

The Department of Education and the Education Authority, working closely with Health and Social Care, continue to extend a new service model for looked after children within the Education Authority, following a successful project taken forward as part of the Early Intervention Transformation Programme. Where the initial project was aimed at improving the educational outcomes for looked after children at Key Stage 2, the approach has now been extended to looked after children at primary level. The aim of the new service model is to adopt a trauma and attachment-informed approach to assist educators in understanding how children's early life experiences can impact on them and what can be done to support them in education.

In addition, the Department of Education's Framework for Children & Young People's Emotional Health and Wellbeing in Education, published in February 2021, aims to ensure that children and young people are empowered and assisted to take care of their emotional health and wellbeing; and that an integrated model is in place which supports early help and intervention focused on children's emotional health and wellbeing needs.

Educational achievement and care leavers

Action for Children has highlighted that the majority of children in care are on a longer attainment journey than their peers that will take them into their 20s and beyond. The cross Departmental nature of this makes this an area for consideration under the Children Services Co-operation Act (NI) 2015. It also considers that the Departments of the Economy and Communities also have a role to play in promoting educational achievement.

Departmental response

As outlined above, the Department agrees that the CSCA is relevant here, as it places a duty on children's authorities to co-operate with each other and with other children's service providers, for the purpose of improving the well-being (including the learning and achievement) of children and young people in NI.

In recognition of the additional challenges faced by care leavers, the Bill includes provision (at clauses 128 and 129) to improve support to care leavers, including continued support to pursue education and training, up to age 25. The Bill also provides a power to amend the age of 25.

In addition, the Looked After Children Strategy also sets out a number of Commitments to Action, including actions to be taken forward jointly with other relevant departments, which are aimed at improving support to care leavers.

Clarification on extent of duty and requirements

NSPCC, while welcoming this provision, has sought more information on the extent of this duty and the specific requirements which authorities will be under to ensure compliance. In specifying these requirements, it will be important to interrogate the underlying reasons why disruption to placements, and therefore education training, continue to occur and address their root causes as this is essentially a symptom of wide failings within the care system.

Departmental response

This duty applies to all looked after children, wherever they live or are educated. The Trust must, therefore, give particular attention to the impact on a child's educational outcomes of any decision about the welfare of a child.

The specific steps that a Trust must take in order to fulfil its duty will not be set out in legislation. Instead, it is anticipated that guidance will be drafted to support Trusts. The following are some of the matters that we consider Trusts will need to undertake or consider:

- Ensure timely provision of a suitable education placement for looked-after children. Trusts should seek a school or other education setting that is best suited to the child's needs, taking account of the child's wishes and feelings.

- For pre-school age children, the Trust should secure access to a nursery or other high quality early years provision that is appropriate to the child's age (e.g. pre-school playgroups) and meets their identified developmental needs.

- Ensure sufficient information about a child's mental health, SEN or disability is available to their education setting so that appropriate support can be provided.

- Inform the school that the child is looked after so that the relevant common funding formula can be applied to enable the child to receive any additional support required.

- As part of the care planning process, ensure that an up-to-date, effective and high quality PEP that focuses on educational outcomes is in place. The PEP should also cover out-of-school hours learning activities and leisure interests.

- Avoid drift or delay in providing suitable educational provision, including special educational provision, and unplanned termination of educational arrangements through proactive, multi-agency co-operation. Where this requires negotiation with other authorities this should be completed in a timely manner and with the best interest of the child as paramount.

- Report regularly on the attainment, progress and school attendance of looked-after children through the Trust's reporting structures.

The duty to promote educational achievement will extend to looked after young people aged 16 or 17 preparing to leave care. It is anticipated that Trusts will need to ensure that:

- the PEP is maintained as part of the preparation and review of the pathway plan and builds on the young person's educational progress;
- each pathway plan review scrutinises the measures being taken to help the child prepare for when s/he ceases to be looked after by considering:

    - the young person's progress in education or training; and
    - how s/he is able to access all the services needed, including SEN provision, to prepare for training, further or higher education or employment;

- links are made with further education colleges and higher education institutions, and care leavers are supported to find establishments that understand and work to meet the needs of looked after children and care leavers.

Matters to be addressed in guidance

Home For Good has recommended that guidance published alongside the Bill should encourage schools to monitor the holistic wellbeing of children and young people, ensuring that in making decisions for children, a focus on academic achievement is not placed above ensuring their emotional needs are supported.

VOYPIC has suggested that guidance must seek to better understand and define what we mean by 'achievement', noting that it cannot be measured simply on GCSE grades. Furthermore, the duty should extend to promoting, and resourcing, greater participation in education and extra- and co-curricular opportunities.

Departmental response

The importance of these matters is already reflected in the Looked After Children Strategy. In addition to learning and achievement, the strategy includes actions relating to children's play and leisure, good physical and mental health, safety and stability and the rights of care-experienced children more generally. This will be reflected in any guidance produced as part of implementation of the Bill.

In addition, the Looked After Children Strategy includes a commitment to implement a Framework for Integrated Therapeutic Care (FITC) for all looked after children in Northern Ireland. It is intended that the FITC will underpin a shared trauma and attachment informed understanding of young people's health and development needs in the broadest sense, ensuring integrated care, educational and therapeutic provision. A core element of the FITC is the concept of a collaborative 'team around the child' approach, with all relevant professionals working together to deliver a 'one child, one plan' approach based on a shared understanding of the child's holistic needs.

This holistic approach is also reflected in the Department of Education's Framework for Children & Young People's Emotional Health and Wellbeing in Education published in February 2021, which aims to ensure that children & young people are empowered and assisted to take care of their emotional health and wellbeing; that an integrated model is in place which supports early help and intervention focused on children's emotional health and wellbeing needs.

It is also supported by the expansion of the new service model for looked after children within the Education Authority, which adopts a trauma and attachment model to assist educators in understanding how children's early life experiences can impact on them and what can be done to support them in education.

Use of 'promote' needs to be strengthened

NICCY welcomes the creation of a duty upon authorities to prioritise educational achievement for children and young people. However NICCY considers that, in its use

of *'promote'* the proposed wording is insufficiently strong in how prioritisation will be implemented or achieved.

NICCY notes that *The Education and Libraries (Northern Ireland) Order 1986* ("1986 Order") places a *'duty'* on parents in respect of education. Failure to uphold this obligation can result in parents being issued with a school attendance order, a supervision order, or further judicial action.

It states that, at present, there is a lack of clarity as to how corporate parents can be held to a standard no less than that expected of a birth or adoptive parent or other specific person in whose care a child or young person is in. NICCY states that the interpretation of "parent" as within the 1986 Order does not help, as it is mainly targeted at specified individuals.

NICCY is of the view that clause 122 should be an opportunity to clarify the expectations upon (and their enforceability) against corporate parents in the education of children and young people for whom they are directly responsible in the same way as any parent would be. The proposed wording must be strengthened to ensure that this is the case.

Departmental response

Article 45 of the 1986 Order sets out the duties of parents to secure full-time education for their children who are of compulsory school age either by regular attendance at school or otherwise. As outlined by NICCY, in accordance with Schedule 13 to that Order, failure to do so can result in the issue of a school attendance order, an education supervision order under Article 55 of the Children Order, or further legal action.

Article 2(2) and (2D) of the 1986 Order defines a parent as including any person:

(a) who is not a parent of his but who has parental responsibility for him, or

(b) who has care of him, except for the purposes of the provisions specified in paragraph (2E) where it only includes such a person if he is an individual.

The provisions set out in paragraph (2E) do not include Article 45 or Schedule 13.

Paragraph (2F) provides further definition to support paragraph (2D)—

(a) "parental responsibility" has the same meaning as in the Children (Northern Ireland) Order 1995; and

(b) in determining whether an individual has care of a child or young person any absence of the child or young person at a hospital or boarding school and any other temporary absence shall be disregarded.

When a child is in care, and subject to a Care Order, a HSC Trust assumes parental responsibility for the child. It is therefore expected that a Trust will take all steps possible to ensure that the child regularly attends school. This will be reinforced, not only through the new duty being placed on Trusts to promote the educational achievement of looked after children, but also through the new Corporate Parenting Principles that will be introduced under the Bill. The following principles will be particularly relevant:

- 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 and work;
- To prepare them for adulthood and independent living.

Statistics provided by the Department of Education – the Children Looked After 2020/21 – Key Statistics show that:

> Rate of attendance at school for looked after children was 91.9%, compared to 93.5% for children who were not looked after [note these rates relate to the 2019/20 year].

These statistics do not indicate that there is a significant issue with school attendance specifically relating to looked after children and, on that basis, the Department considers that it is not necessary to further strengthen the wording ("promote") in that respect.

It should be noted that, in undertaking the full range of duties and functions set out in the Children Order, there are no provisions relating to enforcement and the Department does not consider that it would be appropriate to introduce such provision for this new duty only. Also, enforcement relating to school attendance remains a matter for the Department of Education and any such strengthening of requirements and associated penalties should be included in the 1986 Order or other Education Orders.

The Department recognises that the duty to promote educational achievement is much wider than just ensuring that a looked after child attends school and we have outlined above some of the matters that we consider Trusts will need to undertake or consider in order to fulfil this duty. However, improving the educational achievement of looked after children and young people requires a collaborative, multi-agency approach and the Department therefore considers that it would be unrealistic to strengthen this duty any further. We will continue to monitor the educational outcomes of care-experienced children, with the aim and expectation that these will improve with the introduction of new legislative duties relating to educational achievement and a strategy aimed at improving the wellbeing of care-experienced children and young people.

Clause 123 - Corporate Parenting Principles

NICCY stressed that the regulations must provide more detail with regards to how corporate parents are held to account for the children in their care.

NSPCC stated "These are high-level principles and it would again be useful to know the specific obligations on Trusts as a result of the principles, as well as any potential consequences where a Trust does not act in accordance with the principles. With regard to the principle, "helping them gain access to services provided by the Trust and any relevant partner", we would suggest the inclusion of access to suitable and appropriate services which will meet the needs of the child. We would refer to the Children and Young People (Scotland) Act 2014 which outlines a range of duties and responsibilities on corporate parents which may be of assistance in determining how compliance with these principles could be determined."

Department's response

The Department will not be making regulations in relation to corporate parenting principles. Instead the Bill provides that authorities must have regard to any guidance given by the Department as to their performance. This is consistent with the approach taken in other jurisdictions. Guidance will be consulted on and stakeholders will be given the opportunity to make their views known, as part of that process.

These principles will overlay what is a very clear framework of statutory responsibilities. The corporate parenting principles capture in one place what is expected of HSC Trusts in connection with the children in their care. HSC Trusts must have regard to the principles—they cannot disregard them—but they have flexibility in terms of how they carry them out. Statutory guidance will issue to guide HSC Trusts in the application of the corporate parenting principles. This builds on the Strategy for Looked After Children, which introduced the concept of a corporate family – a range of organisations with responsibilities for them and to them.

The Department considers that it is not appropriate to attach consequences for failing to apply the principles. These principles are designed to consolidate the statutory responsibilities that Trusts already have and express them in one place. They have the benefit of being used to guide practice clearly and succinctly, leaving it in no doubt what is required of a good corporate parent.

In the same way that no penalties are attached to non-compliance of any functions set out in the Children Order, there are no penalties attached to the corporate parenting principles. However, there are ways to assess compliance, including through Delegated Statutory Functions Reporting. The HSCB compiles a report on a six monthly basis based on information supplied by HSC Trusts. Each report is scrutinised by the Office of the Social Services and the Chief Social Worker is advised of the outcome. The Chief Social Worker will call to account any Trust if they are failing in their responsibilities. The Report is published annually.

In England's Corporate Parenting Guidance there is no reference to consequences if Local Authorities do not have regard to these principles.

The Children and Young People (Scotland) Act 2014 which provides for corporate parenting principles and how they should be delivered also does not make any reference to consequences or penalties. However, Scottish Ministers may issue directions to any corporate parent about its corporate parenting responsibilities and its planning, collaborating or reporting functions. In addition, Scottish Ministers must, as soon as practicable after the end of each 3 year period, lay before Parliament a report on how they have exercised their corporate parenting responsibilities

It should be noted that we have similar powers in Northern Ireland. The Department currently can issue directions to the Regional Board about the carrying out by that body of any of its function. This power is contained in the Health and Social Care (Reform) Act (NI) 2009. Under the draft Health and Social Care Bill currently progressing through the Assembly the Regional Board will be abolished. This will mean the Department will be able to issue directions directly to a HSC Trust. This power could be used if there is a concern about the failure of a HSC Trust to undertake any of its statutory functions under the Children Order/adopt any the corporate parenting principles.

Clause 125 - Accommodation for children: requirements

Issue

Clause 125(3) amends Article 27 of the Children Order to provide a new power for the Department, by way of regulations, to impose any requirements which Trusts must comply with before making any decision about the provision of accommodation for a child it is looking after.

NICCY, while welcoming the intent of this clause, has suggested that it should be changed from an enabling power to make regulations ("may") to a requirement to do so ("shall"). NICCY considers that making such a change would ensure that "this vitally important matter will be addressed as a matter of urgency."

Department's response

The Department has included this provision in the Bill to ensure that it has sufficient powers in the Children Order to make Care Planning Regulations, broadly equivalent to the Care Planning, Placement and Case Review Regulations 2010 (the 2010 Regulations) which apply in England. Regulations 10 to 12 of the 2010 Regulations set out additional requirements where a local authority is proposing to make a decision concerning the provision of accommodation which may disrupt a child's education; or which is outside the local authority's area. Such requirements include, for example, the need for such a decision to be approved by a nominated officer of the local authority.

While Counsel has advised that there is nothing to prevent such a duty being imposed (although advised that 'must' should replace 'shall' for reasons relating to clarity and the use of plain language), throughout the Bill and also the Children Order, the Department is empowered, rather than required, to make Regulations. This is consistent with equivalent legislation in other UK jurisdictions.

The Department is of the view that, to amend this particular clause to read "must" and not similarly amend other such clauses throughout the Bill and also the Children Order would suggest that the Department considers this clause to have more importance than others. This is not the case. Indeed, this power is linked to other relevant powers in both the Bill and the Children Order which, combined, will be relied upon to make Care Planning Regulations. As a result, making such an amendment would not result in the matter being addressed more urgently, as has been suggested by NICCY.

The Department does not, therefore, propose to make the amendment suggested by NICCY. We remain committed to bringing forward the relevant Care Planning Regulations as soon as possible following enactment of the Bill.

Clause 126 – Authority Foster Parents

Placing fostering panels on a statutory basis

Clause 126 inserts new Article 28A in the Children Order and provides a power to make regulations governing the operation of fostering panels. The Fostering Network has recommended that, in developing regulations for panels, consideration is given to the composition, representation and independence of the fostering panel to ensure a fair and transparent process.

Department's response

The Department is committed to engaging in a full consultation process with stakeholders in the development of regulations. Current guidance states that fostering panels should reflect an appropriate range of expertise and constituted to ensure representation from a variety of backgrounds. It is intended that this will continue to be reflected in regulations which will set out, for example, the persons suitable to participate in a fostering panel, and the rules regarding independence of the panel chair. Also, note the reference to an independent review mechanism below.

Independent review mechanism

A number of stakeholders, including VOYPIC, the HSCB and HSC Trusts, Family Routes, BASW NI, and Action for Children welcomed the establishment of an Independent Review Mechanism (IRM) which will enable a person to apply to the Department for an independent review of a 'qualifying determination' made in respect of them by an adoption agency or foster care provider.

Fostering Network also welcome the establishment of an IRM and advised that the majority of those at Fostering Network's consultation event agreed with the proposal. However, it reported that around 10% had concerns, not with the introduction of an IRM, but with the fact that as currently set out in the Bill this provision does not go far enough. In England and Wales, following the IRM's recommendation, the final decision on continued suitability to foster is made by the fostering service's decision maker. Fostering Network believes that fostering services should be responsible for making local decisions but should not be responsible for making decisions about a foster carer's continued suitability to foster; rather they should make a referral on suitability to a central body such as the IRM. If there were a register of approved foster carers, then individuals could be removed following unsuitability decisions.

On this basis, Fostering Network, has requested an amendment to clause 126 to replace the word "review" with the words "final decision". If amended in this way, clause 126 would read "establishing a procedure in which any person in respect of whom a qualifying determination has been made may apply to the Department for an independent **final decision** of that determination by a panel constituted by the Department."

Fostering Network would also like to see an IRM in Northern Ireland operate in a timely fashion, with truly independent members, including experts by experience, foster carers and young people. All those experts by experience, alongside key stakeholders, should be involved in the development of the regulations governing the IRM.

Department's response

Clause 126 inserts a new Article 28A in the Children Order which provides the Department with the power to make regulations to establish an IRM. The detail on how the process will operate, including the membership, duties and powers of the IRM Review Panel, will be set out in those regulations. Further public consultation will be undertaken to inform decisions about how the IRM should operate and to inform the drafting of the regulations.

In establishing a review mechanism, decisions will need to be taken about the extent of any powers that an IRM Panel is given and whether any recommendation made by the Panel must be applied by the Agency Decision Maker within the relevant agency. The provision in clause 126, which enables the establishment of an IRM, is sufficiently broad to enable further considerations about the extent of the powers of the IRM to be made as part of the process of developing Regulations, which will be consulted upon. On that basis, the Department does not therefore consider that clause 126 requires any amendment at this time.

Clause 127 - Duty to ensure visits to and advice etc. for children

Clause 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 if the child requests it from the authority.

VOYPIC has responded with concern that no mention is made of the need to ascertain the wishes and feelings of the child with regards to the nature of the visit.

Department's response

The Department recognises the importance of enabling children and young people who receive children's social care services to express their views freely in all matters affecting them, and for those views to be given due weight in accordance with their age and maturity. This is reinforced by the corporate parenting principles enshrined in clause 123 of the Bill, which place a duty on Trusts, when carrying out their functions, to encourage children and young people to express their views, wishes and feelings, and to take those into account.

Clause 127 also contains a regulation-making power at 28B(4)(b) concerning the circumstances in which the child must be visited by a representative. This would provide scope to stipulate the need to take the child's wishes and feelings into account with regards to the nature of such visits and for these to be taken into account, as would any associated guidance. The Department will give further consideration to this, when developing the regulations and will liaise with VOYPIC as part of that process. The draft regulations will also be subject to public consultation.

Clause 128 - Former relevant children: continuing functions

Clause 128 inserts new provisions into the Children Order in relation to support available to former relevant children.

Going the Extra Mile Scheme

Fostering Network NI and Home for Good have raised concerns that the GEM scheme is only open to young people in education, training or employment. There are other young people who do not fit this definition who could benefit significantly from the extra stability. Both organisations have suggested that eligibility criteria for the GEM scheme should be extended to include all those in foster care.

Department's response

Current guidance (which will require updating) on the GEM scheme states that the scheme is available to:

- young people aged 18 – up to 21 years who are residing with former carers; and
- who are engaging in some form of education, training, prevocational, personal development, volunteering and / or employment until aged 21 years (or beyond where it is in keeping with the Trust's statutory duty to continue to support young people beyond 21 years).

It also states that there may be specific circumstances that might fall out outside of these categories, and such circumstances should not automatically exclude a young person from the scheme and should be considered in the context of the longer-term goals and aspirations of the young person.

As practice has developed and practitioners experience of and confidence in operating the scheme has grown, this criteria is used very loosely.

Clause128(2) of the Bill 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. The Bill does not stipulate that only those former relevant children who are in education, employment or training can take part in the scheme. The Department does not, therefore, consider that any further amendment of the Bill is required. Going forward, and as will be clearly stated in the revised guidance, engagement in education, employment or training or otherwise should not be an impediment to a young person remaining in GEM. For some young people, remaining in GEM may be what is required to enable them to engage at a later stage in some form of education, employment or training.

Extending provision to all authority foster carers

In addition, Fostering Network is of the view that the GEM provision of post 18 care should not be restricted to being delivered by the foster carers young people are currently living with and has suggested that clause 128 should be amended to replace "former foster parent" with "approved foster carer".

Department's response

The purpose of the continuing care arrangement is just that, continuing care with their existing foster carer. The purpose of continuing care by way of the GEM Scheme is to enable an established and successful relationship/arrangement between a young person and their foster carer to continue post-18 with the necessary support being provided.

Continuing care arrangements should not come as a surprise to the young person at age 18. In line with good needs assessment and pathway planning as per statutory duties under the Children Order, these arrangements should be discussed, clarified and agreed well in advance of the young person approaching 18 so as to eliminate any uncertainty, worries etc. The social worker/ personal adviser, the fostering support worker, the foster carers and the young person are all part of the planning and decision making.

However, it is recognised the circumstances of a carer can change which could impact on the agreed plan. Equally, and as does happen on occasions, the young person may subsequently decide that they want to try out/test an alternative living arrangement. The current regional guidance on GEM provides for return of the young person to the GEM placement within a specified period if this is what the young person/ foster carer wants and there are no impediments to such a return. It recognises that sometimes young people need to test out alternatives to realise what is best for them and/or what they want.

Financial support

Fostering Network has also sought clarification of the level of financial support to be provided and has recommended that the words "in line with fostering allowances" should be inserted at the end of clause 128.

Department's response

Rates and payments available as part of the GEM Scheme are currently set out in guidance and are dependent on the circumstances of each case. There is an agreed rate for mainstream GEM carers which is based on the current model scheme rate for 16/17 year olds. In addition, if the young person is in a fee paid placement an enhanced rate of up to £13K plus the model scheme rate is paid to allow continuity of care for these young people. There may be some adjustments to take account of a young person's own income. Updated guidance on the GEM scheme will detail the rates available.

The Department will, however undertake a further assessment as to whether it would be appropriate to amend clause 128 to insert into new Article 34DA(4) the wording suggested by Fostering Network in order to ensure that the payment received by a former foster carer under the GEM Scheme is no less than the allowance which they would have received as a foster carer.

Personal Advisers

Currently all eligible, relevant and former relevant children must have a personal adviser. 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.

The Bill will extend the duty to appoint a personal adviser for any former relevant child who has reached age 21 but not 25 if they inform the Trust that they wish to receive advice and support, or is pursuing, or wishes to pursue, a programme of education or training. A personal adviser will be available until after the agreed education or training programme ends even if this is beyond aged 25.

VOYPIC and Fostering Network have raised concerns that some young people do not have an allocated personal advisor and have recommended that, as part of implementation of the Bill, the personal adviser service needs to be appropriately resourced to ensure that all young people have access to this support.

Department's response

The Delegated Statutory Functions Report for the period 1 April 2020 to 31 March 2021 shows that 204 young people were awaiting allocation of a Personal Adviser. Many of these young people will still have their care plan in place and a named social worker.

Reasons for non- allocation of a Personal Adviser are varied but generally are to do with vacant social work posts, delays in recruitment and staff sick leave.

At a regional level HSCB is embarking on a review of leaving care services to examine current operating models, practice and planning aligned to statutory duties to care leavers, capacity and demand pressures in the context of increasingly complex needs of young people leaving care. This will be undertaken in advance of the wider review of children's services and will potentially inform the wider review.

Costs associated with the additional personal advisers which will be required as a result of the new provision in clause 128 of the Bill have been included in the overall estimated costs for implementation.

Issue

VOYPIC has noted in relation to clause 128(3), new Article 34DC(7) that 'the authority may disregard any interruption in the person's pursuance of a programme of education or training if they are satisfied that the person will resume it as soon as it reasonably practicable'. VOYPIC is of the view that this provision should also explicitly include change in programme, where a young person decides to follow a different path of learning or training. Furthermore, it should include extension, where a young person completes a programme of study and then seeks to continue their studies at a higher level."

Department's response

New Article 34DC extends the duties of Trusts to appoint a Personal Adviser to a former relevant child who has informed the Trust that he is pursuing or intends to pursue a programme of education or training but to whom the Trust would otherwise owe no duty because the young person is over 21 years of age or has completed or abandoned the programme set out in his original pathway plan. Where a young person decides to pursue a new course or extend his/her existing studies and advises the Trust of this, a new

pathway plan is prepared and a needs assessment is carried out to determine what assistance is required. The assistance provided, including the appointment of a personal adviser and maintenance of the pathway plan will last 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.

The young person's pathway plan may be updated at any time, as circumstances change, but it will be reviewed at least 6 monthly.

The Bill does not contain any provision that prevents support being provided for more than one programme of education post 21. The Department considers issues around a young person wishing to change their original programme of education or training or wishing to continue to a higher level programme should be set out in guidance rather than on the face of the Bill. Guidance will set out all the scenarios of when support may be provided.

Training and Resource Implications

The Western Health and Social Care Trust has commented that "While a positive development, this will have training and resource implications to assess and monitor the needs of former Looked After Children into adulthood."

Department's response

An Outline Business case, setting out the estimated costs for implementation of the Bill, has been prepared. These costs include the additional provisions relating to the leaving and after care service and training of relevant staff.

Clause 129 – Local offer for care leavers

Clause 129 inserts a new Article 34G into the Children Order which places a duty on Trusts 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 preparing for adulthood and independent living. Each Trust must also, if it considers it appropriate, publish information about services to care leavers offered by others, which the Trust 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.

A Trust must update their Local Offer from time to time and must consult with persons who appear to it to be representative of care leavers in its area, about which of the services offered by the Trust may assist care leavers in, or preparing for adulthood and independent living.

Issue

NICCY has commented that "For this to be effective there should be a timeframe in which care leavers must be directly advised of specific services sufficiently in advance of leaving care so that they can effectively avail of them. As such a timeframe should be included."

Department's response

It would not be appropriate to include such a timeframe on the face of the Bill. In line with good needs assessment and pathway planning as per statutory duties under the Children Order, support and services available should be discussed, clarified and agreed well in advance of the young person approaching 18 so as to eliminate any uncertainty, worries etc. The social worker / personal adviser, the fostering support worker, the carers and the young person are all part of this planning and decision making.

In addition, care leavers who are in need of advice/support at any time after the age of 18 and up to age 25 can request such advice/support. They will be advised of services available and if appropriate a personal adviser will be appointed, their needs will be assessed and a pathway plan completed. Advice and support may be of a short duration, for example a one off problem relating to their employment or may be longer term, for example, an unplanned pregnancy. All agreed actions/supports should be recorded on their pathway plan.

In addition, under new Article 34DB(8) (which is being inserted into the Children Order by clause 128(3)), where a former relevant child who has reached age 21 is not receiving advice and support, for example, because they did not want to avail of such a service, the Trust must offer such advice and support to the former relevant child as soon as possible after they have reached age 21 and at least once in every 12 month period thereafter. They will be supplied with information on the Trust's Local Offer for Care Leavers at this point.

TAB 19

Clause 130 - Inquiries into representations

Issue

VOYPIC has requested greater clarity on clause 130, inquiries into representations, specifically the insertion into Article 35D of the Children Order that "regulations may be made by the Department imposing timescales on the making of representations".

Department's response

The purpose of introducing time limits is to ensure that complaints and representations are dealt with promptly, relate to current practice/service provision and that Trusts are able to learn from and act upon complaints from its service users, in particular, children and young people.

Any time limits will be set out in Regulations and it is anticipated that the Regulations will also provide Trusts with the discretion to consider any representations made outside of the statutory time limits. It is expected that decisions will be made on a case-by-case basis and there will be a presumption in favour of accepting the complaint unless there is good reason against it.

Subject to consultation with stakeholders, it is intended that the regulations will mirror the Children Act 1989 Representations Procedure (England) Regulations 2006, which state that:

> (1) A complainant must make his representations about a matter no later than one year after the grounds to make the representations arose.
> (2) But a local authority may consider any representations which have been made outside the time limit specified in paragraph (1) if, having regard to all the circumstances, they conclude that—
>
> > (a) it would not be reasonable to expect the complainant to have made the representations within the time limit; and
> > (b) notwithstanding the time that has passed it is still possible to consider the representations effectively and fairly.

TAB 20

Clause 132 - Advocacy services

Independence

In relation to clause 132, Statutory Advocacy Services, The Fostering Network and NSPCC have responded that they would like further assurances that advocates will be independent.

Department's response

Where queries have been raised about the process of appointing advocates, this will continue to be a matter for the organisation which has the contract to provide advocacy

services, but the Department plans to issue guidance to further define this practice. All guidance will be produced following consultation with stakeholders.

While the advocacy clause itself does not specify "independent" services, the clause does contain regulation making powers that allow the Department to specify who may provide advocacy services. It is intended that this will be used to ensure independence by specifying that services may not be provided by persons linked to the service that is the subject of representations. Additionally, the Bill provides a further regulation making power requiring authorities to monitor the steps that they have taken with a view to ensuring that they comply with regulations made for the purposes of ensuring independence.

The Department will also consider whether there is any further amendment which could be made to clause 132 which would more clearly reflect that advocacy services will be independent of HSC Trusts. Any proposed amendment will be brought forward during Consideration Stage of the Bill.

Extension of advocacy services

Additionally, NSPCC has stated that they would like to see the extension of the provision of statutory advocacy services to situations outside of the limited contexts proposed in the Bill, to assist children and young people in ensuring that their wishes and feelings are heard at every stage of their journey through the care system. NSPCC have also asked for assurances that children can appoint an advocate of their choosing, and The Fostering Network has suggested that regulations include foster carers as advocates for the children in their care. In their response to clause 120, wishes and feelings, The Fostering Network noted that there have been examples where children and young people have not been heard, or have had to make a complaint or raise a concern to the individual about whom they wished to complain. They suggest that advocates appointed under clause 132 could lead best practice in this area.

Department's response

The Department recognises the important role foster carers play in advocating for the children in their care, and the importance of a child having an advocate with whom they feel comfortable. We envisage that children and young people will be able to engage a person of their own choosing as an informal advocate; be that a parent, teacher or foster carer. We anticipate that this will be set out in guidance, which will make clear the difference between an informal advocate and a statutory advocate provided for under the Bill. Guidance will be developed in consultation with stakeholders.

It is intended that guidance will clarify that the advocate performs a general role in helping children and young people find out about their rights in care and making sure their voice is heard in care planning and decision making.

The extension of the provision of advocacy services to other areas of a child's journey through the care system would need to be very clearly defined to make it possible to include within legislation.

Clause 133 - Definition of Harm

Clause 133, as drafted, adds the words shown in bold below to the current definition of "harm" in Article 2 of the Children Order:

> "harm" means ill-treatment or the impairment of health or development, **including, for example, impairment suffered from seeing or hearing the ill-treatment of another**, and the question of whether harm is significant shall be determined in accordance with Article 50(3).

Also in Article 2, "ill-treatment" is defined as including "sexual abuse and forms of ill-treatment which are not physical"; "development" means physical, intellectual, emotional, social or behavioural development; and "health" means physical or mental health.

The Fostering Network, NICCY, Barnardo's, VOPIC and NSPCC recommend that the proposed amendment of the definition of harm in the Children Order, as contained in clause 133, should be expanded to take account of circumstances where a child has been adversely affected by domestic abuse despite not seeing or hearing it.

Stakeholders have pointed in particular to section 9 of The Domestic Abuse and Civil Proceeding Act (NI) 2021, which provides at subsection (2) that abuse is aggravated by reason of involving a relevant child if:

(a) at any time in the commission of the offence—
  (i) A directed, or threatened to direct, behaviour at the child, or
  (ii) A made use of the child in directing behaviour at B, or
(b) the child saw or heard, **or was present during**, an incident of behaviour which A directed at B as part of the course of behaviour, or
(c) a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, **to be likely to adversely affect the child.**

Whilst highlighting the Domestic Abuse and Family Proceedings Act as an example, Barnardo's does not believe that the definition of harm should be restricted to domestic abuse only but should apply to any kind of abuse that might interconnect with the life of a child.

NSPCC suggests that consideration is given to the introduction of a statutory duty on Health Trusts to provide specialist domestic abuse support for child victims in the context of this Bill.

Department's response

The Department recognises that a child or young person can be adversely affected by the ill treatment of another person, even if they do not have an awareness or understanding of the abuse. We also acknowledge that the definition should apply not just in the context of domestic abuse but more broadly to all forms of ill treatment. Indeed, the term "harm" already applies in a range of contexts across the Children Order and the Bill, such as the welfare checklist of factors that a court must have particular regard to

when making decisions in certain children's proceedings; the conditions for making a care or supervision order; conditions for placing a child in secure accommodation; child assessment and emergency protection orders.

The Bill amends the definition of "harm" in the Children Order to include a child seeing or hearing the ill-treatment of another person, that is, in addition to the harm experienced by a child him/herself. As a result, courts, police and authorities will be required to consider the effect on a child of witnessing domestic abuse when making critical decisions about their care or upbringing.

Through recent engagement with stakeholders, and points raised by members during Committee briefings and Second Stage of the Bill, the Department had become aware of the recommendation that the provision should go further and include where a child is adversely impacted by such abuse, even if they have not seen or heard it taking place, or where a child lives in a house where such abuse is, or has been taking place.

The Minister gave a commitment at Second Stage to consider extending the provision as outlined above. The Bill team are exploring the matter with Department of Justice officials and will consult with Legislative Counsel on options for the wording of any such amendment. An amendment will be brought to the Committee, with a view to tabling it for Consideration Stage of the Bill.

The introduction of a statutory duty on Health Trusts to provide specialist domestic abuse support for child victims, as highlighted by the NSPCC, would not be within the scope of the Bill. The provision of this type of specialist support is a matter that could be addressed through non-legislative means.

Clause 134 - Care plans

Input to care planning process / wishes and feelings

Fostering Network, VOYPIC and the Western HSC Trust, have commented on clause 134 which places care planning on a statutory basis and introduces a power to enable the Department to make Care Planning Regulations for Northern Ireland.

VOYPIC has recommended that provision is included in the Bill which will ensure, when a plan for a child's care is being drawn up, that the wishes and feelings of the child are sought, and given due weight when making decisions on the content of the plan.

Fostering Network expressed concerns from foster carers that children in foster care do not always know they have a care plan, and it was felt that foster carers could usefully contribute to care plans. Fostering Network has recommended that provision is built into the Bill for foster carers to provide input into care plans.

Department's response

The Bill will place the existing system of care planning on a statutory basis, requiring Trusts to prepare a care plan for the child within a timescale set by the court and keep it under review. The Department will set out in regulations how the care plan is to be drawn up and the information to be included in the care plan. It is not appropriate for this level of operational detail to be included in the Bill.

Article 26(2) of the Children Order already places a duty on authorities, before making a decision in respect of a child who is looked after, or is proposed to be looked after, to ascertain the wishes and feelings of the child, the child's parent, any person who is not a parent but has responsibility for the child, for example the child's foster carer, and any other person whose wishes and feeling they consider relevant, regarding the matter to be decided. The Care Planning Regulations will reinforce this general duty; relevant wishes and feelings will need to be considered throughout the care planning, implementation and review process.

A review of current care planning and review arrangements is being planned in advance of regulations being developed. In addition to the regulations, guidance will also be introduced to support Trusts to comply with their care planning and review functions as they relate to children in care.

Training

The Western Health and Social Care Trust has highlighted the need for training to be built in for implementation in respect of care planning.

Department's Response

As part of the Bill's implementation, training will be conducted on the Bill's implementation. Training will be phased to coincide with the phased commencement and implementation of provisions in the Bill. Guidance will also be introduced to support staff within the Trusts to comply with their care planning and review functions as they relate to children in care.

Independent Reviewing Officers (IRO)

VOYPIC welcomes the fact that care planning will be placed on a statutory basis, particularly in light of the Department's decision not to introduce an Independent Reviewing Officer. They hope that this measure will ensure that decisions made about a child in care will be based on principles of best interest and assessed need and will reduce financially motivated decisions regarding the care and placement of children.

Fostering Network has reported significant concerns from their foster carers about independent scrutiny of care plans, with foster carers keen to see regulations prescribing a role for independent reviewing officers.

Department's Response

Following public consultation on the Bill, the Department no longer proposes to introduce an Independent Reviewing Officer (IRO) Service on a statutory basis. Instead, the Department will bring forward regulations to ensure all Trusts work towards a uniformed approach to care planning and the review of children cases. Trusts already have review mechanisms in place and a review of current care planning and review arrangements is being planned in advance of regulations being developed

Guidance will also be introduced to support Trusts in complying with their care planning functions and roles. It is envisaged that such guidance will recommend that Trusts consider introducing some elements of the IRO's role and functions, for example the independent chairing of looked after children reviews and ensuring that any ascertained wishes and feeling of the child concerned have been given due consideration. This will give the Trusts the flexibility to either create an IRO role, or adopt elements of the role to build on current practices, which will include the independent chairing of looked after children reviews already operating in some Trusts. This will ensure that an element of independent oversight to care planning is maintained.

Clause 135 - Contact: children in care of authority

Clause 135 amends Article 53 of the Children Order to make clear that the authority must have regard to the welfare of the child when making an order for contact, and that the duty on the Trust to endeavour to promote contact will be disapplied where the court has authorised the Trust to refuse contact or the Trust considers that such contact would be contrary to the child's welfare.

Issue

VOYPIC has expressed the importance of taking children and young people's wishes and feelings into consideration when decisions are being made in respect of their contact with family, including extended family.

Department's response

The Department recognises the importance of balancing the needs of all parties where contact is concerned, however in all decisions regarding contact the welfare of the child must be the paramount consideration. The corporate parenting principles enshrined in clause 123 of the Bill place a duty on Trusts to encourage children and young people to express their views, wishes and feelings, and to take those into account when carrying out their functions.

It is intended that regulations under the amended Article 53 of the Children Order will further define what a Trust must have regard to in considering whether such contact is consistent with safeguarding and promoting the child's welfare, and that, where relevant, they should have regard to the child's care plan. To note, The Care Planning, Placement and Case Review (England) Regulations 2010 established that the terms of a no contact order could be departed from with the agreement of the child, subject to their age and understanding. The Department will consider similar regulation, subject to consultation.

Clause 137 – Renaming of Guardian ad Litem

The Law Society of Northern Ireland does not support the renaming of the Guardian ad Litem for the following reasons: there is a risk of confusion; the current terminology has been in place for some time and is familiar to all; and there is already an officer with a similar name - the Court Children's Officer - connected to the family courts in respect of private law matters.

Department's response

During the Department's 2017 consultation on the Bill, there was a mixed response to the proposal to change the name of the Guardian ad Litem: 47% of respondents felt the name should be changed; 23% felt it should be retained, and 13% were undecided.

The primary argument for changing the name was that children and service users do not understand what the name means and feel that it needs to be modernised. Looked after children have chosen 'Children's Court Guardian' as the title that is most meaningful to them. Numerous stakeholders highlighted in their consultation response that, in accordance with Article 12 of the UNCRC, the wishes of children and young people should be reflected in the decision.

In particular, NIGALA has acknowledged the importance of giving views of children and young people due consideration and emphasised that, for children and young people, the Guardian Ad Litem is their point of contact in court proceedings. It was therefore agreed that the name of the Guardian ad Litem should reflect the role and service provided.

A key principle of the Bill is that the best interests of the child should be paramount. The Department does not consider that it would serve the best interests of looked after children if we failed to take account of their wishes and feelings about the title of an organisation and its officials whose primary purpose is to act as a voice for them in public law and adoption proceedings. We consider that these considerations outweigh the concerns expressed by the Law Society regarding risk of confusion.

Clause 143 - Annual Report

Clause 143 repeals Article 181 of the Children Order which places a duty on the Department of Health to produce an annual report on the operation of the Children Order. Fostering Network NI, Adoption UK, VOYPIC, BASW NI and Action for Children have all expressed concern around this change. The majority have expressed a wish for the reporting requirement to be retained and / or amended, rather than repealed.

Department's response

Since the Children Order came into operation, only one report under Article 181 has been produced - in 1999. Since then, a number of other reporting mechanisms have been established, which provide key statistical information on the operation of certain provisions of the Children Order. These include NIGALA Annual Reports and Statistics; Delegated Statutory Functions Reports; and Children's Services Statistical Data produced by the Department. All are connected with the operation of the Children Order.

The decision to progress with a repeal of the report was based on resource implications, duplication of data, and the fact that no other UK jurisdiction requires such a report to be produced by a government department. However, the Department recognises that following consultation in 2017, a majority of respondents were in favour of retaining the report and amending the frequency to every three years. Respondents suggest that retaining the report would clearly demonstrate a commitment from the Department to children's rights and welfare, and that amending the frequency to three years would allow for a more detailed report showing trends that would better inform the work of the Department.

The Department remains of the view that the reporting requirements under Article 181 are duplicative and that a commitment to the furtherance of children's rights and welfare can be better demonstrated in other ways. On that basis, the Department is not minded to retain or amend Article 181.

Children and Young People's Strategic Partnership (CYPSP)

Action for Children and BASW NI would like the Bill to have included provision to create a statutory Regional Children and Young People's Strategic Partnership (RCYPSP). Action for Children points to the support expressed during consultation for proceeding with the change. Whilst acknowledging that provision will not be included in the legislation before the Assembly, both organisations are seeking a timetable for introducing the changes in children's planning and partnership arrangements.

Department's response

The Department acknowledges that a statutory partnership would have the potential to deliver improvements in the well-being of all children and young people in Northern Ireland – not just those who are vulnerable.

In 2015, the Department gave a commitment to consult on plans to place CYPSP on a statutory footing. We consulted and the plan was widely supported. However, it became apparent when instructing Counsel that new legislation to establish the partnership cannot sit comfortably alongside the Children's Services Co-operation Act (NI) 2015 (the 2015 Act), brought forward at that time by OFMDFM. That Act requires all of the current statutory members on CYPSP to co-operate with each other to improve children's well-being.

It is clear that new legislation to establish a statutory partnership will need to be reconciled with the 2015 Act. Following consultation with the Department of Education and Legislative Counsel, we accepted that it was necessary to give the 2015 Act time to embed and any structures - established under the strategy which the Act requires the Executive to adopt - to be established and tested.

The Minister has signaled that he would be content to work with the Education Minister to agree what needs to be done to create a statutory children's partnership tasked with working together to improve the wellbeing of all children and young people. Any timetable would need to be agreed with the Department of Education.

Resources to implement the Bill

A number of organisations have commented on the need for adequate resources to implement the new provisions in Bill.

Department's response

An exercise to estimate the costs associated with the Bill was conducted with key stakeholders in 2019/20. This exercise informed the Outline Business Case prepared by the Department, which was subsequently approved by the Department of Finance on 12 April 2021. It is anticipated that, once the Bill is enacted, a Full Business Case will be prepared, and at this stage, initial costings will be refined.

It is estimated that the cost to implement the Bill over 3 years will be circa £38.3 million.

In year 1 it is estimated that the cost to implement the Bill will be circa £13.8 million. The majority of the costs associated with the Bill will be recurrent and it is estimated that recurrent costs of circa £12.6 million will be required in year 2 and recurrent costs of circa £12.3 million will be required in year 3.

Additional funding will be sought as part of the Spending Review process, taking account of the timescales for phased commencement and implementation of provisions once the Bill receives Royal Assent. It is anticipated that costs will not begin to be incurred until 2023/24 at the earliest.

A breakdown of the estimated costs to implement the Bill has been shared with the Committee.

Draft Foster Care Regulations

Fostering Network NI has raised concerns about the delay in bringing forward the draft Foster Care Regulations, which have been in draft form for almost seven years, and has suggested that these Regulations could enable the Corporate Parenting principles to be applied in practice.

Department's response

The draft Fostering Placement and Fostering Agencies Regulations for Northern Ireland were consulted on in 2014 and brought before the Health Committee in 2016. However, the Committee Chair advised there was insufficient time to consider the Regulations and they should be brought back to the Committee in the following mandate. Before that was possible the Assembly was dissolved in 2017.

Given the passage of time since the original consultation, it is intended to undertake a short targeted consultation on the draft Regulations and make any changes necessary before submitting to the Assembly Health Committee for scrutiny. It is expected this consultation will commence within the next two months.

Following consultation, it is expected the Regulations will be brought back to the Health Committee for scrutiny in early 2022.

New standards for fostering services will be developed following the introduction of the Fostering Placement and Fostering Agencies Regulations. In the meantime, existing Standards for Foster Care will continue to apply.

Call to amend the Bill to introduce definitions of Permanence and also Long Term Foster Care

Fostering Network has stated that it believes the Bill could go further in terms of permanence options. It has stated that SGOs and Residence Orders are important but long-term fostering also needs to be legally recognised as a permanence option. The Fostering Network wants to see long-term fostering relationships respected, valued and actually seen as permanent and protected similar to the proposals for adoptive and special guardianship placements. It suggests that a first step towards this in Northern Ireland would be to use a definition of permanence which makes it clear there are a variety of options, all of which can deliver good outcomes for individual children.

VOYPIC also supports this proposal and calls for the inclusion of a definition of permanence for children and young people in the Bill, which includes long term fostering.

Department's response

The Children Order does not contain a definition of "permanence" or "long term foster care". This is consistent with the position in England and Wales; the equivalent legislation, the Children Act 1989, also does not contain such definitions.

However, in England, for the purposes of care planning requirements, the Care Planning, Placement and Case Review Regulations 2010 (the 2010 Regulations) provide definitions of a "plan for permanence" and a "long term foster placement". The purpose of such provision is to establish long term foster care as a legally defined permanence option for looked-after children, require local authorities to adhere to a set of conditions when they are proposing long term foster care as the permanence plan for a child and allow greater flexibility in relation to social work support for such long term arrangements.

A "long term foster placement" is defined as an arrangement made by the responsible authority for a child to be placed with foster parents where—

- the child's plan for permanence is foster care,
- the foster parent has agreed to act as the child's foster parent until the child ceases to be looked after, and
- the responsible authority has confirmed the nature of the arrangement to the foster parent(s), the child and the child's parents.

The definition also makes clear that the arrangement may be the result of a change in placement status where the child is already placed with the foster carers and those carers become the long term foster carers for the child.

The "plan for permanence" is defined in the 2010 Regulations as the long term plan for the child's upbringing.

The 2010 Regulations also set out additional requirements that must be complied with before a child can be placed in a long term foster placement. These include ensuring that the placement plan is in place, that the child, child's relatives and Independent Reviewing Officer have been consulted in the making of the placement, that the foster carer is clear

about the arrangement and has made the necessary long term commitment, and that the arrangement is the most appropriate way to safeguard and promote the child's welfare.

The 2010 Regulations also set out the circumstances where the authority must adopt a more flexible approach to statutory visits for children who are settled in long term foster placements. The authority must reduce the minimum visiting frequency for these children to not more than six months where the child has been in the long term foster placement for at least a year (the point at which the placement is recorded in the child's placement plan and the child agrees (subject to their age and understanding) to be visited less frequently. However, the child and/or carer can continue to request additional visits at any time.

The Department intends to make Care Planning Regulations, equivalent to the 2010 Regulations, as part of work to implement the Bill. Consultation on these Regulations will allow us to seek broader views on such issues at that stage.

As part of drafting Care Planning Regulations, we intend to set out what the care plan must include and the intention is that this will include the child's **plan for permanence** and what should be included in that section of the plan. This would be consistent with the approach taken in England in the 2010 Regulations. Further consideration could also be given to introducing the concept of "**long term foster care**" in such Regulations.

The draft Regulations will be subject to public consultation and, if such an approach is agreed, further amendment to the Children Order would not be required as the Department has already confirmed with Counsel that the necessary powers to make regulations equivalent to the 2010 Regulations are either already included in the Children Order or are provided in the Bill. The Department does not therefore consider that any further amendment to the Bill is required.

The Department is of the view that amending the Children Order to insert a definition of "**permanence**" is not necessary.

Children Order

VOYPIC, in its written evidence to the Committee has commented "This Order is now more than 30 years old, and has been subject to amendments over its lifetime. While VOYPIC is supportive of many of the changes to be brought about through this Bill, we question the need for repeal and replacement of the Order. This Bill seeks to make changes to a system in need of reform, while maintaining the structural integrity of how children and young people are cared for in Northern Ireland."

Department's response

The Department acknowledges that the Children Order, the key law for children's social care is now more than 25 years old, although the Adoption and Children Bill will give effect to some of the key developments in children's social care that have been available for some time in other jurisdictions.

The Department intends to undertake a fundamental review of children's social care, starting in early 2022. Subject to the outcome of the review, it is considered that further changes to the Children Order are likely to be required. It is at that point that a more comprehensive review of the Children Order should be undertaken.

Committee for Health

Wendy Patterson
DALO
Department of Health

By email to: Wendy.Patterson@health-ni.gov.uk

Our Ref:C280/21

18 October 2021

Dear Wendy,

Adoption and Children Bill

At its meeting on 14 October, the Committee for Health noted the written submissions received in response to its call for evidence on the Adoption and Children Bill.

In view of the limited timeframe for its consideration of this Bill, the Committee would appreciate a written response from the Department to the issues raised by the stakeholders. The submissions can be viewed on the Committee webpage at:

http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/health/primary-legislation/adoption-and-children-northern-ireland-bill/written-submissions/

I should appreciate a response as soon as possible, and no later than 15 November 2021.

Yours sincerely,

Keith McBride,
Clerk, Committee for Health

CC: Suzanne.Howe@health-ni.gov.uk
Craig.Murray@health-ni.gov.uk