

FROM THE MINISTER OF HEALTH



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Dear Colm

In my letter to you of 21 December 2021, I outlined my intention to bring forward a number of amendments to the Adoption and Children Bill.

Since then, work has been ongoing with Legislative Counsel to draft the necessary amendments and I am now in a position to share these with you, in advance of the publication of the Committee's report on the Bill. The amending clauses and associated explanations are set out in Appendix A to this letter.

There are two matters, in particular, to which I wish to draw your attention.

Clauses 25 and 26 – technical amendment not required

In my previous correspondence I indicated that I intended to bring forward technical amendments to clauses 25 and 26. These clauses set out rules about applications for other orders during the period that a child is placed for adoption or the adoption agency is authorised to place the child for adoption under Article 16 (placing children with parental consent) and also where a placement order has been made. Both clauses include references to applications for SGOs, stating that if an application has been made for an adoption order, any person wishing to apply for an SGO during this time must seek the leave of the court to make such an application.

If a child has been placed for adoption and an adoption order has been applied for, the child will have been living with their prospective adoptive parents for a period of time. My officials had, therefore, considered that it would not be possible for another individual to meet the one year residence requirement for making an application for an SGO and, on this basis, Counsel was instructed to amend both clauses.

However, Counsel has now identified a very narrow set of circumstances under which an individual could meet the requirements. As a result, it is considered that the existing provisions in clauses 25 and 26 should be retained and no amendment to these clauses will be tabled. I understand that my officials advised the Committee of this when they briefed the Committee on 13 January.

Clause 133 – Definition of Harm

In my letter dated 21 December 2021 to the Committee I confirmed that, in response to points raised by Members during the Second Stage debate on the Bill, I intended to proceed to amend clause 133 to add the words “or being present”. As a result, the definition of “harm” in the Children Order would be amended to read:

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

This amendment was subsequently discussed with officials at the Committee’s meeting on 13 January and it was agreed that the proposed amendment should be shared with key stakeholders who had raised the matter previously. The view of the NI Commissioner for Children and Young People was subsequently sought and the Commissioner advised that she would not be content on the basis that the amendment would not extend the definition of “harm” to instances in which a child is not present during and does not witness ill-treatment inflicted on another but is nevertheless negatively impacted by it. Following further consultation with Counsel, a revised amendment has been drafted which addresses this issue. As a result, the definition will be amended to read:

“harm” means ill-treatment or the impairment of health or development and the question of whether harm is significant shall be determined in accordance with Article 50(3);

“impairment of health or development” includes, for example, impairment suffered as a result of—

- (a) the ill-treatment of another, or*
- (b) behaviour directed at another that falls within section 2 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (what amounts to abusive behaviour),*

whether or not the child who suffered the impairment saw or heard, or was present during that ill-treatment or behaviour;”

This proposed revised definition has been shared with the Commissioner and she has indicated that she would be content for the definition to be amended in this way.

As a result, I intend to table this revised amendment.

I have written to my Ministerial colleagues to inform them of the amendments I intend to bring forward. As none of the amendments constitute a change in policy, this will be for information only.

I would like to take this opportunity to thank Members of the Committee for the scrutiny which they have given to the Bill within such a challenging timescale and I look forward to reading the Committee’s report.



Robin Swann MLA
Minister of Health

**AMENDMENTS TO BE TABLED BY THE DEPARTMENT OF HEALTH FOR
CONSIDERATION STAGE**

Clause 102 – Pre-commencement adoptions: information

Clause 102, Page 60, Line 20

At end insert—

‘(aa) assisting a natural parent of a person referred to in paragraph (a) to obtain information in relation to that person’s adoption; and’

Clause 102, Page 60, Line 21

Leave out ‘such persons’ and insert ‘persons referred to in paragraph (a)’

Clause 102, Page 60, Line 24

At end insert—

‘(2A) Regulations under section 9 may make provision for the purpose of authorising or requiring adoption agencies in prescribed circumstances to disclose or provide access to prescribed information relating to the adoption of a person adopted before the appointed day who has attained the age of 18.’

Clause 102, Page 60

Leave out line 34 and 35 and insert—

‘(4A) For a purpose within subsection (1), (2) or (2A) the regulations may impose conditions on the disclosure of information, including conditions restricting its further disclosure.’

Clause 102, Page 60, Line 37

Leave out ‘(3)’ and insert ‘(2A) or (3),’

Clause 102, Page 60, Line 38

At end insert ‘; but an adopted person (“A”) may not be required to pay any fee in respect of any information disclosed to A or to which A was provided access.’

Clause 102, Page 60, Line 40

After 'subsection' insert '(2A) or'

Explanation

Access to information was one of the key themes which emerged from the work of the Truth Recovery Design Panel and was identified as an issue for victims-survivors very early on in that process. Officials have met on a number of occasions with a group of victims-survivors of Mother and Baby Institutions to discuss, in particular, the provisions in the Bill relating to disclosure of information. As a result, there are three amendments that the Minister has agreed to make.

Two of the amendments relate to clause 102 which makes provision for pre-commencement adoptions. The intention is to extend the regulation making powers to enable the Department to include, in any regulations to be made under clause 102, new provisions relating to the disclosure of information for pre-commencement adoptions. This would enable all such provision to be included in one set of Regulations, rather than continuing to rely on the Adoption Agencies Regulations (NI) 1989 which are now more than 30 years old. It would also enable the Department, in consultation particularly with victims and survivors of Mother and Baby Institutions, to agree more acceptable wording, as some have expressed concerns about the wording in the 1989 Regulations. Counsel has advised that while the general regulation making powers in clause 9 of the Bill would be sufficient to allow the Department to do this, he has suggested that, for clarity, it would be preferable to amend clause 102 to include a specific power.

Clause 102 will also be amended to extend intermediary services to allow assistance to be provided to the natural parents of an adopted person who wish to obtain information from an adoption agency about the adoption. As currently drafted, intermediary services for such individuals are restricted to facilitating contact.

Clause 119 – Special Guardianship support services – duty to undertake assessments, on request

Clause 119, Page 71, Line 19

Leave out lines 19 to 30 and insert –

‘(3) An authority must at the request of –

- (a) a relevant child;
- (b) a special guardian of a relevant child;
- (c) a prospective special guardian of a relevant child;
- (d) a parent of a relevant child; or
- (e) any other person who falls within a prescribed description (subject to sub-paragraph (za) of paragraph (9)),

carry out an assessment of that person’s needs for special guardianship support services.

(3A) In paragraph (3)—

(a) “relevant child” means a child in respect of whom—

- (i) a special guardianship order is in force;
- (ii) a person has given notice to an authority under Article 14A(7) of intention to make an application for a special guardianship order; or
- (iii) a court is considering whether a special guardianship order should be made and has asked an authority to conduct an investigation and prepare a report under Article 14A(9),

(b) “prospective special guardian” means a person—

- (i) who has given notice to an authority under Article 14A(7) of the person’s intention to make an application for a special guardianship order; or
- (ii) in respect of whom a court has requested that an authority conduct an investigation and prepare a report under Article 14A(9).’

Clause 119, Page 72, Line 12

At end insert –

‘(za) as to the circumstances in which a person mentioned in sub-paragraph (e) of paragraph (3) is to have a right to request an assessment of that person’s needs in accordance with that paragraph;’

Explanation

The purpose of this amendment is to place a duty on authorities, on the face of the Bill, to conduct an assessment of needs for special guardian support services in respect of certain categories of people, on request.

New paragraphs (3), (3A) and (9), to be inserted in clause 119 (new Article 14F), will require an authority to provide an assessment of need for special guardianship support services if requested by or on behalf of children with respect to whom an SGO has been applied for or is in force, by current or prospective Special Guardians and parents of such children.

This will mean proposed new Article 14F(3) in clause 119 will place the above categories of persons on the face of the Bill rather than in Regulations (as had been the original intention). By placing such provision in the Bill, this will more clearly demonstrate the Department's commitment to ensuring that assessments are undertaken, where requested, and will ensure that the approach for undertaking such assessments is broadly consistent with provision in clause 5 in relation to assessments of need for adoption support services.

Provision in new Article 14F(3), which enables the Department to prescribe additional categories of persons for whom an assessment must be undertaken on request, will be retained.

Such amendment is entirely in keeping with the previously stated policy that the welfare of the child is paramount and will provide equality of the right to an assessment of need for support services in respect of special guardianship, equivalent to that available for adoption support services.

Clause 132 – Advocacy services

Clause 132, Page 85, Line 1

At beginning insert ‘Independent’

Clause 132, Page 85, Line 4

At beginning insert ‘Independent’

Explanation

Clause 132 inserts a new provision into the Children Order to provide that an authority (a HSC Trust) must make arrangements for the provision of assistance to those who make or intend to make representations under Articles 35D and 45 of the Children Order.

Stakeholders suggested that clause 132 should be amended to more clearly reflect that advocacy services will be independent of Trusts. In order to address that, this amendment will insert the word “independent” in the heading of clause 132 and also the heading of new Article 45A which is to be inserted into the Children Order.

The Department considers that the wording of the clause itself should not be amended. While the clause does not specify “independent” services, new Article 45A(3) 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, new Article 45A(4) 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 paragraph (3) (i.e. ensuring independence).

While this will ensure independence from the service that is the subject of representations, this does not mean that a Trust cannot provide advocacy services. It is intended that guidance issued under the Bill in relation to advocacy services will

make it clear that where it does, no person associated with the case under consideration (directly or in line management terms) for which advocacy is being sought, can have had any part to play in the case.

Clause 133 – Definition of Harm

Amendment 1

Clause 133, Page 85, Line 25

Leave out the words from “in the” to the end of line 27 and insert ‘at the appropriate place insert—

“impairment of health or development” includes, for example, impairment suffered as a result of—

(a) the ill-treatment of another, or

(b) behaviour directed at another that falls within section 2 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (what amounts to abusive behaviour),

whether or not the child who suffered the impairment saw or heard, or was present during that ill-treatment or behaviour;’

[Amendment 2

Clause 133, Page 85, Line 27

At end insert –

‘(2) In Article 12A(1) of the Children Order (residence and contact orders and domestic violence), for the words from “through seeing” to the end of the paragraph substitute “as a result of any behaviour of the prohibited person.”.’]

Explanation

Clause 133 amends the definition of “harm” in the Children Order to include a child seeing or hearing the ill-treatment of another person. As a result, courts, police and Trusts will be required to consider the effect on a child of witnessing domestic abuse when making critical decisions about their protection, care or upbringing.

In response to representations made by a number of stakeholders and also by Members during the Second Stage debate on the Bill, I intend to table an amendment to clause 133 in order to extend the provision to include where a child is adversely impacted by such abuse, even if they have not seen, heard, or been

present during, it taking place. Amendment 1 provides for this. The amendment also brings the definition of harm within the Children Order more in line with the Domestic Abuse and Civil Proceedings Act (NI) 2021.

As a result, the definition of “harm” in the Children Order would be amended to read:

“harm” means ill-treatment or the impairment of health or development and the question of whether harm is significant shall be determined in accordance with Article 50(3);

“impairment of health or development” includes, for example, impairment suffered as a result of—

(a) the ill-treatment of another, or

(b) behaviour directed at another that falls within section 2 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (what amounts to abusive behaviour),

whether or not the child who suffered the impairment saw or heard, or was present during that ill-treatment or behaviour;”

Amendment 2 provides for consequential amendment, arising as a result of the amendment to the definition of “harm”, to Article 12A of the Children Order. The Department of Finance has policy responsibility for Article 12A of the Children Order. I have therefore sought the agreement of the Finance Minister to such an amendment being made. I will only proceed to table this amendment if such agreement is provided. Should the Finance Minister, for whatever reason, not agree to an amendment to Article 12A, this will have no implications whatsoever for the definition of harm within the Bill.

Article 12A was inserted into the Children Order by the Family Homes and Domestic Violence (NI) Order 1998. It places a duty on the court, when considering whether to make a residence order or contact order in favour of a prohibited person, to consider whether the child has suffered or is at risk of suffering any harm through seeing or hearing ill-treatment of another person by the prohibited person. A person is a

prohibited person if he is, or the court considers that he should be, prohibited by a non-molestation order from molesting (for example, inflicting physical, emotional, financial and sexual abuse on or engaging in coercive and controlling behaviour, intimidating behaviour or harassment of) another person.

The purpose of making such amendment is to ensure that there is consistency of approach in the application of harm across all provision in the Children Order. The effect of the amendment is that Article 12A would be amended to read:

“12A(1) – Where a court is considering whether to make a residence or contact order in favour of a prohibited person, the court shall consider whether the child has suffered or is at risk of suffering any harm as a result of any behaviour of the prohibited person.”

Clause 155 – Regulations made under clauses 9 and 42: Suitability of adopters

Clause 155, Page 94, Line 18

At end insert –

“(aa) section 9 which include provision made under section 42;”

Explanation

Clause 42 of the Bill provides a power for the Department to prescribe in regulations the matters to be taken into account by an adoption agency in determining, or making any report in respect of, the suitability of any persons to adopt a child. In accordance with clause 155, the negative resolution procedure would apply when making these regulations.

During Second Stage debate on the Bill, Jim Allister, MLA suggested that such regulations should be subject to affirmative resolution rather than negative resolution procedure. Mr Allister stated that he considered the suitability of adopters was too important an issue not to be debated by the Assembly.

Having given further consideration to the matter, I will table an amendment to clause 155(2) to include regulations made under clause 42 in the list of regulations which will be subject to affirmative resolution procedure. This will be consistent with the approach being taken with other regulations to be made under clause 98 of the Bill relating to individuals who may not prepare reports about the suitability of a child for adoption or of a person's suitability to adopt a child.

Schedule 2 – requirement to attend interview with counsellor

Schedule 2, Page 103, Line 36

Leave out paragraph 4

Explanation

Schedule 2 to the Bill provides for the disclosure of birth records by the Registrar General to persons who were adopted before the appointed day, that is, the day appointed for the commencement of sections 55 to 64 of the Bill. The Registrar General is required to advise any adopted person seeking access to their birth record that a counselling service is available to them. However, under paragraph 4 of Schedule 2 of the Bill, people adopted before 18 December 1987 are required (rather than being given the option) to attend a counselling interview before the Registrar General can provide the information.

This provision restates the current legal requirement in Article 54(7) of the Adoption (Northern Ireland) Order 1987. The view has been that compulsory counselling is necessary in order to help the adopted person contextualise the likely circumstances at the time of their adoption placement, and to be supported with the disclosure of birth information, information about their origins and offer intermediary services if the adopted person decides to try and trace birth family and are considering a reunion.

The policy intention was not to create a barrier for individuals adopted prior to 1987 to access their records, but to ensure that those people receive the support they may need to help them in learning more about the circumstances of their birth, adoption and in tracing birth family if they so wish.

However, some victims and survivors of Mother and Baby Institutions consider that this should not be case and that they should be treated in the same way as other adopted adults and have the right to decide for themselves whether to avail of such counselling services. Taking account of this and views expressed by the Attorney General on this matter prior to the introduction of the Bill, the Department has

engaged with the Registrar General's Office on this matter. It is clear that process changes will be necessary to support this amendment and there are concerns about those individuals seeking a copy of an original birth certificate, who may not be aware they were adopted. While this is the case, I have decided that, on balance, an amendment to the Bill should be tabled to remove paragraph 4 from Schedule 2.

The duty on the Registrar General, under paragraph 2 of that Schedule, to inform adopted adults of the availability of counselling services will continue to apply. It will be for the adopted adult, regardless of when they were adopted, to decide whether to avail of counselling services, and from whom.

Schedule 3 – Consequential amendment: Access to Justice (Northern Ireland) Order 2003

Schedule 3, Page 120, Line 4,

At end insert -

‘65A. In Schedule 2 (civil legal services: excluded services), in paragraph 6 at the end insert “or the Adoption and Children Act (Northern Ireland) 2021”.’

Explanation

Paragraph 6 of Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 (the 2003 Order) provides that legal aid services will not be funded for the provision of advice, assistance or representation to any Guardian ad Litem (GAL) for the purpose of proceedings under the Children Order. It does not include any equivalent exemption in relation to a GAL currently appointed for the purpose of adoption proceedings under Article 66 of the Adoption (NI) Order 1987.

Article 66 of the 1987 Order will be repealed and replaced by clause 106 of the Bill. Under this clause, a Children’s Court Guardian (formerly a GAL) will be appointed for applications for the making, varying or revocation of an adoption placement order; the making of an adoption order, applications for the making, varying or revocation of an order for contact during placement for adoption; and the making of an order under clause 84 (giving parental responsibility prior to adoption abroad).

The Department has agreed with the Department of Justice that a consequential amendment should be made to paragraph 6 of Schedule 2 to the 2003 Order. This amendment will provide that legal aid services will not be funded for the provision of advice, assistance or representation to any Children’s Court Guardian for the purpose of proceedings under clause 106 of the Bill. Such an amendment will ensure that there is consistency of approach in relation to Children’s Court Guardians, whether they are appointed under the Children Order or the Adoption and Children Bill.

Schedules 4 and 5 – Repeal of the Adoption (Hague Convention) Act (Northern Ireland) 1969

Schedule 4, Page 135, Line 29

At end insert –

‘The Adoption (Hague Convention) Act (Northern Ireland) 1969

7A. –

- (1) Despite the repeal of the Adoption (Hague Convention) Act (Northern Ireland) 1969 (“the 1969 Act”) the following provisions of that Act continue to have effect—
- (a) section 5(1) (recognition of foreign determinations) so far as it applies to a determination made by an authority of any British territory outside the United Kingdom in respect of a convention adoption order and to which subsection (1)(b) of that section applies,
 - (b) in section 6 (annulment etc.)—
 - (i) subsection (1) so far as it applies to convention adoption orders, and
 - (ii) subsections (3) and (4) so far as they apply to determinations,
 - (c) in section 8 (registration)—
 - (i) subsection (3) so far as it applies to convention adoption orders or any entry or mark erroneously made in pursuance of subsection (2) of that section, and
 - (ii) subsection (4).
- (2) Despite the repeal of the 1969 Act, the following provisions of that Act continue to have effect so far as they are necessary for the purposes of sub-paragraph (1)—
- (a) section 7 (provisions supplemental to section 6),
 - (b) section 9 (nationality),
 - (c) section 10 (supplemental),
 - (d) section 11 (rules),
 - (e) section 12 (interpretation).
- (3) In this paragraph—

“the 1969 Act” means the Adoption (Hague Convention) Act (Northern Ireland) 1969,

“convention adoption order” means an order under Article 12(1) of the Adoption (Northern Ireland) Order 1987 made in accordance with section 1(1) of the 1969 Act,

“determination” means a determination that has effect by virtue of section 5(1) of the 1969 Act.’

Schedule 5, Page 136, Line 5

At end insert -

‘

The Adoption (Hague Convention) Act (Northern Ireland) 1969

| The whole Act.

’

Explanation

The Department has determined, based on legal advice from the Departmental Solicitor and Legislative Counsel, that outdated legislation giving effect to an international adoption convention that is no longer in operation, that is, The Adoption (Hague Convention) Act (Northern Ireland) 1969 should be repealed. The amendment will insert provision in Schedules 4 and 5 of the Bill to repeal the 1969 Act and to insert savings provision to ensure that the future rights of anyone adopted through a convention adoption order under the 1969 Act will not be negatively affected by its repeal.

Consequential amendments arising as a result of the Health and Social Care Act (Northern Ireland) 2022 – Dissolution of the Regional Board

Amendment 1

Clause 3, Page 4, Line 6

Leave out from ‘are’ to end of line 7 and insert ‘are to its operational area as specified under paragraph 3A(2) of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991.’

Amendment 2

Clause 3, Page 4

Leave out lines 9 and 10

Amendment 3

Clause 144, Page 89, Line 10

Leave out ‘Regional Board’ and insert ‘Department’

Amendment 4

Clause 144, Page 89, Line 36

Leave out ‘Regional Board’ and insert ‘Department’

Amendment 5

Clause 145, Page 89, Line 39

Leave out ‘Regional Board’ and insert ‘Department’

Amendment 6

Clause 145, Page 89, Line 40

Leave out ‘Regional Board’ and insert ‘Department’

Amendment 7

Clause 145, Page 90, Line 3

Leave out 'Regional Board's' and insert 'Department's'

Amendment 8

Clause 145, Page 90, Line 5

Leave out 'Regional Board' and insert 'Department'

Amendment 9

Clause 145, Page 90, Line 6

Leave out 'Regional Board' and insert 'Department'

Amendment 10

Clause 145, Page 90, Line 8

Leave out 'Regional Board' and insert 'Department'

Amendment 11

Clause 145, Page 90

Leave out lines 9 and 10

Amendment 12

Clause 146, Page 90, Line 20

Leave out 'Regional Board' and insert 'Department'

Amendment 13

Clause 146, Page 90

Leave out lines 21 and 22

Amendment 14

Clause 147, Page 90, Line 25

Leave out 'Regional Board' and insert 'Department'

Amendment 15

Clause 147, Page 90, Line 27

Leave out 'Regional Board' and insert 'Department'

Amendment 16

Clause 147, Page 90, Line 36

Leave out 'Regional Board' and insert 'Department'

Amendment 17

Clause 147, Page 90, Line 37

Leave out 'Regional Board' and insert 'Department'

Amendment 18

Clause 148, Page 91, Line 10

Leave out 'Regional Board' and insert 'Department'

Amendment 19

Clause 148, Page 91, Line 28

Leave out 'Regional Board' and insert 'Department'

Amendment 20

Clause 148, Page 91, Line 34

Leave out 'Regional Board' and insert 'Department'

Amendment 21

Clause 148, Page 91, Line 38

Leave out 'Regional Board' and insert 'Department'

Amendment 22

Clause 149, Page 92, Line 19

Leave out 'Regional Board' and insert 'Department'

Amendment 23

Clause 150, Page 92, Line 40

Leave out 'Regional Board' and insert 'Department'

Amendment 24

Clause 158, Page 97

Leave out line 14

Amendment 25

Schedule 3, Page 107, Line 32

At end insert—

'The Health and Personal Social Services (Northern Ireland) Order 1991

14A. In Article 10A (definition of “social care and children functions”), in paragraph (1)(e), for “Adoption (Northern Ireland) Order 1987” substitute “Adoption and Children Act (Northern Ireland) 2021”.’

Amendment 26

Schedule 3, Page 117, Line 33

Leave out from 'for' to 'appropriate' in line 35 and insert 'for the words from “or an” to the end of the paragraph substitute “or an appropriate”.

Amendment 27

Schedule 3, Page 117, Line 37

Leave out from 'for' to 'appropriate' in line 39 and insert 'for the words from “or an” to “(N.I.22)” substitute “or an appropriate”.

Amendment 28

Schedule 3, Page 121, Line 36

At end insert –

‘The Health and Social Care Act (Northern Ireland) 2022

77A.—(1) Schedule 1 (transfer of the Regional Board’s functions) is amended as follows.

- (2) Omit paragraphs 102 to 120.
- (3) Omit paragraph 193(2)(b) and (3)(b).
- (4) Omit paragraph 195(2).’

Amendment 29

Schedule 4, Page 133, Line 29

Leave out ‘or the Regional Board’

Amendment 30

Schedule 4, Page 133, Line 31

Leave out ‘or the Board’

Amendment 31

Schedule 4, Page 133, Line 34

Leave out ‘or the Regional Board’

Amendment 32

Schedule 4, Page 133, Line 38

Leave out ‘or the Board’

Amendment 33

Schedule 4, Page 133, Line 41

Leave out ‘or the Board’

Amendment 34

Schedule 5, Page 138, Line 38

At end insert-

‘
The Health and Social Care Act (Northern Ireland) 2022 | In Schedule 1, paragraphs 102 to 120, paragraph 193(2)(b) and (3)(b), and paragraph 195(2).’
,

Explanation

The Health and Social Care Bill, which makes provision for the Regional Health and Social Care Board to be dissolved, has now completed its Final Stage in the Assembly and is currently awaiting Royal Assent.

The Adoption and Children Bill now needs to be amended to remove references to the Regional Board.

Clause 3 will be amended to remove the Regional Board from the definition of an adoption authority. Each HSC Trust will continue to be the adoption authority in relation to its area. Amendment 2 will provide for this. Amendments 29 to 33 also amend transitional provision in Schedule 4 to the Bill to remove references to the Regional Board from the powers to enable elements of the new adoption support services framework to be implemented in advance of the full implementation of the Bill.

As a result of amendments to be made by the Health and Social Care Bill to the Health and Personal Social Services (NI) Order 1991, the Department will no longer need to take a power to prescribe, for the purpose of the Bill, the operational area of each HSC Trust. Instead, any reference to the operational area of a Trust will be as specified under paragraph 3A(2) of Schedule 3 to the 1991 Order. Amendment 1 will provide for such changes to be made to clause 3 of the Bill.

Clauses 144 to 150 relating to the Northern Ireland Adoption and Children Act Register will also be amended to substitute references to the Regional Board with references to the Department. Amendments 3 to 23 provide for this.

The definition of “Regional Board” will be removed from the Interpretation section provided at clause 158, on the basis that such a definition will no longer be required on dissolution of the HSCB. Amendment 24 provides for this.

The remaining amendments which will be tabled – amendments 25 to 28 and 34 – make consequential amendments to the 1991 Order and the Health and Social Care Bill, and also to repeal some of the provisions in that Bill, once enacted. These are technical matters which are required as a result of the eventual repeal, by the Adoption and Children Bill, of the Adoption (Northern Ireland) Order 1987.

Duty on relevant institutions to preserve and retain relevant records

Amendment 1

New clause

Before clause 144 [(and the italic heading preceding it)] insert—

‘Documents relating to women and children in institutions

143A. - Preservation of relevant documents

- (1) A person (“P”) who has in P’s custody or under P’s control a relevant document—
 - (a) must not alter, destroy or otherwise dispose of the document,
 - (b) must not remove or transfer the document to a place outside of Northern Ireland, and
 - (c) must take appropriate measures to ensure that the document is not stolen, lost, destroyed or otherwise damaged.
- (2) A relevant document is under the control of P if it is in P’s possession or if P has a right to possession of it.
- (3) A person who intentionally or recklessly—
 - (a) contravenes subsection (1), or
 - (b) causes or permits a contravention of subsection (1),is guilty of an offence.
- (4) A person who is guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding six months, or to both.
- (5) In this section and in section 143B, “document” means anything in which information is recorded in any form.’

Amendment 2

New clause

After clause 143A insert—

‘143B. - Meaning of “relevant document”

- (1) For the purposes of section 143A, a document is a relevant document if it satisfies the conditions in subsections (2) to (4), but this is subject to subsection (5) and such exceptions as may be prescribed.
- (2) The first condition is that the document contains relevant information.
- (3) The second condition is that the document was created by or on behalf of—
 - (a) a relevant institution,
 - (b) a person who was a resident of a relevant institution in the relevant period,
 - (c) a body, society or organisation with responsibility for the health, welfare or care of women or children, or
 - (d) such other person as may be prescribed.
- (4) The third condition is that the document is likely to be of interest to a person conducting an inquiry or investigation relating to the implementation of the recommendations made by the Truth Recovery Design Panel as set out in a statement to the Assembly made by the First Minister and deputy First Minister acting jointly on 15th November 2021.
- (5) A document is not a relevant document if a copy of the document or the information it contains is generally available to the public.’

Amendment 3

New clause

After clause 143B insert—

‘143C. – Meaning of “relevant information”

- (1) In section 143B, “relevant information” means—
 - (a) information about the operation of a relevant institution in the relevant period including information relating to—
 - (i) the occupancy of the institution;
 - (ii) the admission, treatment, care and discharge of residents;
 - (iii) the management of staff or volunteers;
 - (iv) the names and addresses of staff or volunteers;
 - (v) financial documents, annual accounts and statements of account;
 - (vi) such other matters as may be prescribed;
 - (b) information about any resident of a relevant institution in the relevant period including information relating to—
 - (i) the resident’s admission to the institution;

- (ii) the resident's departure from the institution;
 - (iii) the treatment or care of the resident in the institution;
 - (iv) work undertaken by the resident in the institution (if relevant)
 - (v) the birth of the resident's child (if relevant);
 - (vi) the resident's parents or relatives;
 - (vii) such other matters as may be prescribed; or
- (c) where a child was born to a resident of a relevant institution in the relevant period, subject to subsection (2), information about the accommodation or care provided to the child—
- (i) during the period in which the mother remained a resident of the relevant institution;
 - (ii) if the mother left the relevant institution and the mother and child were separated, during any period in which the mother and child were separated,
 - (iii) in such other circumstances as may be prescribed.
- (2) Information relating to the accommodation or care of a child who was born to a resident of a relevant institution in the relevant period is not relevant information if the accommodation or care was provided by a natural parent of the child or a relative of the child.
- (3) For the purposes of subsection (1)(c)(ii) and subject to such exceptions as may be prescribed, a mother and child were separated if the child was provided with care and accommodation by a person other than the mother for a period of at least six consecutive months.
- (4) In this section, "relative" means a grandparent, brother, sister, uncle or aunt, whether by blood (including half-blood), marriage or civil partnership.'

Amendment 4

New clause

After clause 143C insert—

'143D. - Meaning of "the relevant period", "relevant institution" and "resident"

- (1) This section applies for the purposes of this section and sections 143B and 143C.
- (2) "The relevant period" means the period between 1922 and 1995 (both inclusive).
- (3) "Relevant institution" means, subject to subsection (4), an institution in which a voluntary organisation provided residential accommodation for women or children in the relevant period, took decisions about the women or children and—

- (a) provided services to the women or children related to pregnancy or maternity,
 - (b) provided day-to-day care for the women or children,
 - (c) required the women or children to work (whether with or without pay), or
 - (d) provided such other service as may be prescribed.
- (4) Regulations may except any description of institution from the definition of “relevant institution”.
- (5) “Resident of a relevant institution” means a person (of any age) who was provided with residential accommodation in a relevant institution.
- (6) A reference to being a resident of a relevant institution includes a reference to being absent from the institution while under the care of—
- (a) the voluntary organisation which provided residential accommodation for the woman or child in the institution, or
 - (b) a person authorised by that voluntary organisation.’

Amendment 5

New clause

After clause 143D insert—

143E. – Offences by bodies corporate etc.

- (1) For the purposes of this group of sections (that is, this section and sections 143A to 143D), section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the functions of management as if that member were a director of the body corporate.
- (2) If an offence committed by a partnership is proved—
- (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to any neglect on the part of the partner’s,
- the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In subsection (2) “partner” includes a person purporting to act as a partner.
- (4) If an offence committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
- (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

- (5) Proceedings for an offence alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).
- (6) Proceedings for an offence alleged to have been committed by an unincorporated association (other than a partnership) must be brought in the name of the association (and not in that of any of its members).
- (7) Rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate.
- (8) A fine imposed on a partnership on its conviction for an offence is to be paid out of the partnership assets.
- (9) A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association.
- (10) Subsections (5) and (6) are not to be read as prejudicing any liability of a partner, officer or member under subsection (2) or (4).
- (11) In this section, “offence” means an offence under section 143A.’

Amendment 6

Clause 159, Page 98, Line 17

After ‘sections’ insert ‘143A to 143E,’

Explanation

On 15 November 2021, the First Minister and deputy First Minister advised the Assembly of the Executive’s agreement to implement all of the recommendations of the Truth Recovery Design Panel’s report relating to Mother and Baby Institutions and Magdalene Laundries.

The new clauses will give effect to part 1 of recommendation 4 from the report of the Truth Recovery Design Panel, published on 5 October 2021 as set out below:

“The Truth Recovery Panel recommends immediate action by the Northern Ireland Executive, supported by the Northern Ireland Assembly, to create a statutory requirement on all relevant record holders to preserve and not destroy any information relating to Mother and Baby Institutions, Magdalene Laundries, Workhouses, adoption-related institutions and ‘baby homes’, and their policies and practices, including personal records. The requirement should extend to all State and non-State institutions and agencies, officials, representatives and professionals that serviced them.”

The records to which these clauses pertain would provide a significant source of information/evidence for the future statutory public inquiry. The Adoption and Children Bill was identified as a vehicle to introduce that recommendation in the current mandate.

The first new clause, clause 143A, introduces a duty to preserve, not alter, destroy or dispose of a relevant document, to not remove or transfer the document to a place outside of Northern Ireland and to take appropriate measures to ensure that a “relevant document” is not lost, stolen, destroyed or otherwise damaged.

For the purpose of the duty at clause 143A, new clause 143B defines “relevant document” as a document: containing “relevant information” [defined]; created by or on behalf of: a “relevant institution”; a person who was a resident in a “relevant institution”; a person with responsibility for the health, welfare or care of women or children; or such other person as may be prescribed; and which is likely to be of interest to an inquiry or investigation in relation to the implementation of the recommendations made by the Truth Recovery Design Panel as set out in a statement to the Assembly made by the First Minister and deputy First Minister acting jointly on 15th November 2021. The clause also provides that a document is not a “relevant document” if a copy of the document or the information it contains is generally available to the public.

For the purpose of the duty at clause 143A, new clause 143C defines “relevant information” as information: about the operation of a relevant institution; about any person resident in a relevant institution; or about the accommodation or care provided to a child born to a resident of a relevant institution. Such information may include details about the admission, treatment, care and discharge of residents, as well as information about specific residents’ admission, departure and care, information about their birth or adoption, any children born to the residents and details about their development in early life.

For the purpose of the duty at clause 143A, new clause 143D provides definitions of “the relevant period”, “relevant institution” and “resident of a relevant institution”. “The relevant period” is defined as 1922 to 1995 (inclusive); “Resident of a relevant institution” is defined as a person (of any age) who was provided with residential accommodation in a relevant institution. “Relevant institution” is defined as an institution in which a voluntary organisation provided residential accommodation for women or children during the relevant period and took decisions about them and which: provided services related to pregnancy or maternity; provided day-to-day care for the women or children; required work from the women or children (whether with or without pay); or provided such other service as may be prescribed. This clause also provides a power to make Regulations which may except any description of institution from the definition of “relevant institution”.

Finally, clause 143E, *Offences by bodies corporate etc.*, provides that an offence of not complying with the duty created at clause 143A applies to: a body corporate with unlimited liability; partnerships and partners jointly; and unincorporated associations (other than a partnership) alongside any identified officer or member who committed the offence. This clause also provides that proceedings for alleged offences by a partnership must be brought in the name of the partnership; offences by an unincorporated association (other than a partnership) must be brought in the name of the association; that rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate; any fines imposed on a partnership or unincorporated association on its conviction for an offence must be paid out of the respective partnership assets or out of the unincorporated association funds.

The clauses introduce a duty to take appropriate measures to ensure relevant documents are not disposed of, are preserved and that appropriate measures are taken to ensure that each relevant document is not lost, stolen, destroyed or otherwise damaged. Anyone who breaches that duty or who destroys, distorts or alters a relevant document will be guilty of an offence and liable to a fine, up to 6 months' imprisonment or both.

The final amendment relating to these new clauses is to clause 159, with the effect that the clauses will be commenced on Royal Assent, ensuring that they are commenced at the earliest opportunity.