FROM THE MINISTER OF HEALTH

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Dear Colm,

I wrote to you on 29 November 2021 setting out my Department's response to the issues raised by stakeholders in their written submissions to the Committee's call for evidence on the Adoption and Children Bill.

In that letter, I indicated that my officials would 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 were:

- 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;

This review has now been completed and my decisions in relation to each matter and the tabling of any amendments arising, are set out at **Annex A** to this letter.

In addition to the matters outlined in Annex A, I also intend to table a number of other amendments to the Bill during Consideration Stage and an overview of these is provided at **Annex B**.

Work is currently ongoing with the Office of Legislative Counsel to draft and agree the actual amendments which will be tabled. As soon as these are finalised, they will be shared with

the Committee in order to inform the drafting of the Committee Report on the Bill which, I understand, is due to be published by the end of January.

My intention in providing this information in writing to you now is that, given the increasingly extremely tight timescales for the Bill, it will hopefully help to facilitate a focused and useful discussion with my officials when they appear before the Committee on Tuesday 11 January 2022.

Robin Swann MLA
Minister of Health

ANNEX A

OUTCOME OF CONSIDERATIONS BASED ON WRITTEN EVIDENCE PROVIDED TO HEALTH COMMITTEE

Clause 5 (Assessments etc. for adoption support services) – Duty to provide services assessed as needed

Following concerns expressed by stakeholders that clause 5 does not place a duty on an authority to provide the adoption supports services which may be identified following an assessment, the Department agreed to 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.

Department's response

We do not propose to bring forward any amendment to clause 5 to place a duty on Trusts to provide adoption support services which have been assessed as needed.

Instead, we are proposing to proceed with the original policy approach that, 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.

<u>Power to prescribe a duty in regulations</u>

Clause 5 of the Bill already provides 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.

Intention to monitor arrangements to inform decisions

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 provide services assessed as needed.

Intention to introduce elements of adoption support in advance of full implementation

The Bill also includes provisions, at paragraph 1 of Schedule 4 (Transitional and transitory provisions and savings) to amend the existing Adoption (NI) Order 1987 to enable important elements of the new adoption support services framework to be implemented in advance of the full implementation of the Bill.

Using these powers, the intention is to implement the first phase of the adoption support services framework as soon as possible. It is anticipated that the Regulations will give adoptive families (this includes children placed for adoption, adopted children, prospective adopters, adoptive parents and their children) an entitlement to receive an assessment of their adoption support needs and give related persons (i.e. natural parent, relative, or any person the child has a relationship with that is beneficial to the child) an entitlement to receive an assessment in relation to support for contact arrangements.

It is also intended that the Regulations will require Trusts to make arrangements for the provision of a range of adoption support services, including financial support, therapeutic support services, assistance to ensure the continuance of adoptive relationships, including respite care, and assistance in relation to contact arrangements.

In accordance with the provisions in clause 5 of the Bill, it is anticipated that the Regulations will require Trusts, having undertaken an assessment of need, to decide whether to provide the services assessed as needed. The process for notification of decisions will be prescribed, as well as the requirement to prepare a support plan.

Such early implementation of some of the elements of adoption support services will relate to the Adoption (NI) Order 1987 scheme for adoption; similar provision in secondary legislation will subsequently need to be made in the context of the Bill's scheme for adoption, once all of the relevant provisions of the Bill have been commenced. At that point, further Regulations will be made to provide for the full range of adoption support arrangements to become operational.

In October 2020, as part of the Spending Review for 2021 - 2024 a bid totalling £3,697,694 was submitted in respect of adoption support services for 2023/24. This reflects the Department's intention to introduce adoption support as early as possible, using the powers provided in Schedule 4.

The early implementation of elements of adoption support services and also the monitoring arrangements which will be put in place will then inform any decisions as to whether the Department should exercise its powers, by way of regulations to be made under clause 5 of the Bill, to place a duty on Trusts to provide adoption support services which have been assessed as needed to specific categories of persons.

Clause 119 - Special Guardianship Orders (SGOs)

Following views expressed by stakeholders that special guardianship support should be provided for on the same basis as adoption support, the Department agreed to reconsider whether:

- To amend clause 119, new Article 14F(3) 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; and
- whether clause 119, new 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

Department's Response

<u>Duty to undertake an assessment of need, on request</u>

We propose to amend the Bill to require the Trust 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.

This will involve tabling an amendment to proposed new Article 14F(3) in clause 119 to place the above categories 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.

We will also retain the 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.

Duty to provide services assessed as needed

We do not propose to bring forward any amendment to clause 119, new Article 14F(5), to place a duty on Trusts to provide special guardianship support services which have been assessed as needed.

Instead, we are proposing to proceed with the original policy approach that, 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.

In clause 119 of the Bill, new Article 14F(6) already provides a power for the Department, by way of regulations, to specify certain categories of people to whom the Trust must provide the support which has been assessed as needed. This 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 for adoption, 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 provide services assessed as needed.

As previously advised, 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 parents following the making of an order.

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.

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.

Clause 128 - Former relevant children: continuing functions: **Going the Extra Mile Scheme**

The Department agreed to undertake a further assessment as to whether it would be appropriate to amend new Article 34DA(4) to provide that the payment received by a former foster carer under the GEM Scheme should be "in line with fostering allowances".

Department's response

We do not propose to make such an amendment to new Article 34DA(4) on the basis that such an amendment would be difficult to define in legislative terms given the number of possible funding permutations.

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. Taking all of this into account, it is evident that the calculation of the former foster carer's allowance under the GEM Scheme is not straight forward and there are a number of scenarios where allowance rates may be impacted because of circumstances.

Instead, it is proposed that updated guidance on the GEM scheme will detail the rates available.

Clause 132 - Advocacy services

Following views expressed by stakeholders, the Department agreed to consider whether any further amendment could be made to clause 132 which would more clearly reflect that advocacy services will be independent of HSC Trusts.

Department's response

The Department proposes to amend the heading of both clause 132 and also new Article 45A to insert the word "Independent".

We do not propose to amend the wording of the clause. 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. The Department recognises that it may not provide full independence from the HSC Trust – a person from within the Trust could still potentially be appointed to act as an advocate. It is intended that guidance issued under the Bill in relation to advocacy services will state that although it should be as independent as possible, there may be circumstances when a Trust employee may be best placed to provide advocacy.

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.

Clause 133 - Definition of Harm

Clause 133 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 Trusts will be required to consider the effect on a child of witnessing domestic abuse when making critical decisions about their care or upbringing.

During the Second Stage debate on the Bill, in response to points raised by Members, I gave a commitment to consider extending the provision to 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.

Department’s response

The Department proposes 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);

ANNEX B

PROPOSED ADDITIONAL AMENDMENTS TO BE TABLED FOR CONSIDERATION STAGE OF BILL

Removal of references to HSCB

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 require amendment 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. Clauses 144 to 150 relating to the Northern Ireland Adoption and Children Act Register will also require amendment to substitute references to the Regional Board with references to the Department.

Clauses 25 & 26 – Amendments to remove the right to seek leave to apply for a SGO where a placement order is in force but before an adoption order is made.

This is a technical amendment to remove provision which is no longer appropriate as a consequence of other provisions in the Bill.

Clause 119 of the Bill inserts new Articles 14A to 14F in the Children Order to introduce Special Guardianship Orders (SGOs). While these Articles mostly mirror equivalent provision in England under the Children Act 1989, the Department has, based on lessons learned following implementation of SGOs in England and Wales, adopted a different approach in terms of eligibility to apply for an SGO. New Article 14A provides that a person may not apply for such an Order unless the child concerned has lived with the person who may be appointed as the child's special guardian for a period of at least one year immediately preceding the application. Such a residence requirement does not apply in England and Wales.

Clauses 25 and 26 of the Bill 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. It is therefore not possible that that another individual could meet the residence requirement for making an application for an SGO (i.e. that the child has to have lived with the prospective special guardian for at least 1 year immediately preceding an application). As a result, clauses 25 and 26 require to be amended. Such an amendment should have been made at the time when we were drafting the provisions relating to the SGO residence requirement but, unfortunately, were overlooked.

We are currently liaising with Counsel to draft the necessary amendments.

Clause 155 – Suitability of adopters regulations: affirmative resolution procedure

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 he considered suitability of adopters was too important an issue not to be debated by the Assembly. I advised Mr Allister that consideration would be given to this amendment.

Having given further consideration to the matter and determined that the same approach was taken in England when making equivalent suitability regulations under the 2002 Act, it is proposed that clause 155(2) will be amended to include

regulations made under clause 42 in the list of regulations which will be subject to affirmative resolution procedure.

Duty on relevant institutions to preserve and retain relevant records

In order to give effect to part 1 of recommendation 4 from the report of the Truth Recovery Design Panel which was published on 5 October 2021, Counsel has been instructed to draft clauses, for inclusion in the Bill, which will compel holders of records relevant to Mother and Baby Institutions, Magdalene Laundries and related institutions to preserve and not destroy those records. The clauses will include offences / penalties for non-compliance. Work is ongoing with Counsel to agree the wording of the clauses.

I have already written to the Chair of the Health Committee advising of my intention to bring forward an amendment, at Consideration Stage, to include such provision in the Bill.

Clause 102 – Pre-commencement adoptions: information

As a result of recent engagement with a small group of victims and survivors of Mother and Baby Institutions, there are a number of amendments that we have agreed to consider making to clause 102. These are explained below.

Extending regulation making powers – disclosure of information

Clause 102 of the Bill enables regulations to be made that will make provision for assisting people adopted pre-commencement to access information about their adoption, including their birth certificate, and to make contact with their relatives through an intermediary service. Among other things, it is anticipated that the Intermediary Services Regulations will set out the process for applying for such a service and what those services will include.

The Department will produce regulations and guidance to support the introduction of intermediary services in respect of pre-commencement adoptions. It is anticipated that adoption agencies will be involved in both the disclosure of information and the facilitation of contact, that is, to act in an intermediary capacity. Regulations will specify how adoption agencies will undertake that role, the mechanism by which a person can access intermediary services and will enable the sharing of information

between adoption agencies and the Registrar General. These regulations will be subject to full consultation.

The Adoption Agencies Regulations (NI) 1989 will continue to apply in circumstances where an adoption agency is considering whether to disclose information from its records, outside of providing an intermediary service. This mirrors the position in England and Wales. However, given the significantly changed landscape as a result of findings and commitments made in connection with Mother and Baby Institutions, the Department now considers it is necessary to have the option going forward 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 Regulations 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 some wording in the 1989 Regulations, including for example, disclosure "as the agency thinks fit". Counsel has advised that the general regulation making powers in clause 9 of the Bill should be sufficient to allow the Department to do this. However, he has suggested that, for clarity, it may be preferable to amend clause 102 to include a specific power.

<u>Extending intermediary services – access to intermediary services by birth relatives seeking disclosure of information only</u>

Stakeholders have highlighted that, as currently drafted, clause 102 only permits intermediary services, in relation to disclosure of information only, to be provided to adopted persons. In relation to relatives of an adopted person (a birth mother or father, for example), intermediary services are restricted to facilitating contact only. We have been asked to consider amending clause 102 to provide that regulations may make provision for assisting relatives to obtain information from an adoption agency. This is currently being considered. My officials will confirm whether such an amendment is to be progressed, when they brief the Committee on 11 January 2022.

<u>Requirement to attend an interview with a counsellor before the GRO can provide information.</u>

Under the Bill, adopted adults continue to have the right to request from the Registrar General any information which would enable them to obtain a certified copy of the record of their birth.

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 can only obtain adoption information from the Registrar General if they have attended a counselling interview, in other words, they are required to attend a counselling interview. 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, 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 as to whether to avail of such counselling services. Taking account of this, the Department is now engaging with the Registrar General's Office on this matter. Subject to any views that it may have, the Department may bring forward an amendment to the Bill 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.

Schedule 3 - Consequential amendments to repeal the Adoption (Hague Convention) Act (Northern Ireland) 1969 and make related savings provisions

This is a technical amendment to include provision in Schedules 4 and 5 of the Bill to repeal the Adoption (Hague Convention) Act (NI) 1969 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.

During work by officials to identify required consequential amendments arising from the Bill, it came to our attention that there remains in force outdated legislation giving effect to an international adoption convention that is no longer in operation. The Adoption (Hague Convention) Act (Northern Ireland) 1969 gave effect to the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption of 1965. The convention was intended to assist with the recognition of adoption orders granted in other countries. There were only three state signatories to the convention and it was denounced by the UK in 2003, when it ratified the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

The 1969 Act also includes provision to allow for the recognition of convention adoption orders as “foreign adoptions” - referred to in subsequent legislation, including the Adoption and Children Bill, as “overseas adoptions”.

All convention adoptions that have taken place under Northern Ireland or UK law from June 2003 onwards have been made in accordance with the 1993 Hague Convention.

As Northern Ireland has no further commitments under the 1965 Convention, the Department proposes to table an amendment to repeal the 1969 Act. Related technical amendments will also be tabled to insert into the Bill 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. This will ensure, for example, that people adopted under the 1969 Act will retain any future inheritance rights. There will also remain a right to annul, review or make changes to the registration of an adoption made under the 1969 Act.

Schedule 3 - Consequential amendment of the Access to Justice (Northern Ireland) Order 2003

This is a consequential amendment to correct an omission in paragraph 6 of Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 (the 2003 Order).

During work to estimate the legal aid costs arising as a result of implementation of the Bill, it was discovered that, while paragraph 6 of Schedule 2 to 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 did 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 considers that paragraph 6 of Schedule 2 to the 2003 Order should be amended to 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 section 106 of the Adoption and Children Act (Northern Ireland). 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.

The Department of Justice has confirmed that it is content for such an amendment to be made. We have advised them that we will seek to include provision by way of an amendment to be made to Schedule 3 (Consequentials) at Consideration stage.