

ADOPTION AND CHILDREN BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Health in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

2. The need for adoption legislative reform in Northern Ireland was highlighted in the consultation of the Department of Health's draft strategy document, *Adopting the Future*, in 2006. The development of the strategy was driven principally by significant changes to the wider legislative and social contexts which govern the delivery of children's services. The strategy set out a number of proposals linked to the reform of adoption and children's legislation in Northern Ireland. The Bill is principally (although not exclusively) the outworking of the Department's commitment to legislative reform in adoption as set out in *Adopting the Future* and many of the provisions that were consulted on are contained within the Bill. In the period following the *Adopting the Future* consultation, there has been further change to Children's, Family and Adoption law in Great Britain and these have been considered in the development of the draft Bill.
3. The purpose of this Bill is to reform adoption law in Northern Ireland, to implement the proposals in the *Adopting the Future* strategy which require primary legislation, and to make amendments to the Children (Northern Ireland) Order 1995 (the Children Order) to improve outcomes for looked after children and young people and young people who have left care.
4. In summary, the Bill:

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This Memorandum refers to the Adoption and Children Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

- aligns adoption law with the relevant provisions of the Children Order to ensure that the child's welfare is the paramount consideration in decisions relating to adoption;
- places a duty on adoption authorities to maintain an adoption service, which must include arrangements for the adoption of children and for the provision of adoption support services (including financial support);
- provides a new right for adopted children and adoptive parents to request an assessment of their needs for adoption support services;
- enables the Department of Health to establish an independent review mechanism in relation to the assessment of prospective adopters;
- makes provision for the process of adoption and the conditions for the making of adoption orders, including new measures for placement for adoption with consent and placement orders to replace the existing provisions in the Adoption (Northern Ireland) Order 1987 for freeing orders;
- introduces a new legal framework for disclosure of information and establishing contact and provides for a new and more consistent approach to access to information held in adoption agency records and by the Registrar General about adoptions which take place after the Bill comes into operation, by ensuring that the release of this sensitive information about adopted people and their birth relatives is protected and that its disclosure is subject to safeguards;
- incorporates the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001, other than sections 1, 2 and Schedule 1;
- provides additional restrictions on bringing a child into the United Kingdom in connection with adoption, aimed at ensuring that British residents follow the appropriate procedures where they adopt a child overseas or bring a child into the United Kingdom for the purposes of adoption;
- provides for restrictions on arranging adoptions and advertising children for adoption (through traditional media and electronically) other than through adoption agencies, and prohibits certain payments in connection with adoption;

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- makes provision enabling the Regional Board to establish a Northern Ireland Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters;
 - makes provision obliging courts to draw up timetables for resolving adoption cases without delay;
 - introduces a new legal framework for disclosure of information and establishing contact.
5. The Bill will also will also extend and strengthen provision in the Children Order to enhance the services provided to children, their parents and carers and to improve outcomes for looked after children. The Bill will amend the Children Order to:
- reduce time period a child is required to have lived with a foster carer from three years to one year, before a foster carer is permitted to seek an order under Article 8 (a Residence Order stipulating the person with whom a child should live);
 - provide that Residence Orders made in respect of looked after children will be automatically granted to age 18 or extended to age 18 unless a court determines otherwise;
 - require an authority to ascertain the wishes and feelings of a child in need in relation to suitable services which they are under a duty to provide, or investigations that they are required to carry out for child protection purposes, and to give those wishes and feelings due consideration;
 - place the existing system of care planning on a statutory basis by requiring the preparation and submission of a care plan by an authority prior to a care order being made by the court;
 - introduce a new special guardianship order, a new legal order intended to provide greater permanence for children who cannot return to their birth families and for whom adoption is not appropriate;
 - introduce a power to make regulations to require Trusts to impose time limits on the making of representations (including complaints) about services provided under the Children Order. The complaints procedure which already applies to services provided under Part 4 (Support for children and their families) of the Children Order will also

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be extended to include the care, supervision and protection of children, and also to adoption and special guardianship services;

- introduce statutory advocacy services for looked after children, former looked after children, special guardianship children or adopted children who wish to make representations (including complaints) about the discharge of any of an authorities functions to children under the Children Order or in connection with adoption functions;
- change the name of the Guardian ad Litem to Children's Court Guardian (CCG);
- enable Children's Court Guardians to be directly employed (rather than admitted to a panel, as is currently the case) and appointed by the courts to represent children in family law proceedings;
- to extend the proceedings in which a Children's Court Guardian will be required to be appointed, to include applications for the making or revocation of an adoption placement order; and applications for the making of a special guardianship order with respect to a child who is the subject of a care order;
- introduce a power for authorities to provide accommodation to a disabled child, for the purposes of providing short term breaks outside of the looked after children system. The new provision also contains a power for the Department to prescribe, by way of regulations, other categories of children to whom such accommodation may be provided, again, outside of the looked after children system;
- remove the restriction on the making of cash payments to children and families in need in exceptional circumstances only;
- introduce a new requirement for authorities, as part of the duty to safeguard and promote the welfare of a looked after child, to promote the child's educational achievement. They will also be required, in providing a child with accommodation, to secure, so far as is reasonably practicable and consistent with his welfare, that the child's education or training is not disrupted;
- introduce a framework of corporate parenting principles that overlay the existing responsibilities of authorities towards looked after children and those leaving care to make clear what it means for an authority as a whole to act as a good parent;

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- introduce a legal duty on an authority to consider the placement of a child with dually approved carers (i.e. approved foster parents who are also approved prospective adopters) when it is considering adoption, or where the decision has been made that the child ought to be placed for adoption;
- provide that fostering panels will be placed on a statutory basis and the constitution, membership, functions etc. of such panels will be prescribed in regulations;
- introduce a power for the Department establish a procedure for independent reviews of fostering decisions (made by fostering panels) about whether a person should be approved to foster or whether a person should continue to be approved to foster. The mechanism will be comparable to the independent review mechanism for adoption decision making;
- extend the age limit for support provided to specified care leavers who are still engaged in education and training from 24 to 25. New provision will also: provide for further assistance to specified care leavers aged between 21 and 25 to pursue a new course of education or training; create a new duty for authorities, on request, to provide specified care leavers aged between 21 and 25 with advice and support which has been assessed as appropriate; and require an authority to publish information about the services they offer to care leavers (the Local Offer);
- place the Going the Extra Mile (GEM) Scheme on a statutory footing to enable care leavers to continue living with their foster parents up to age 21;
- provide that current duties on authorities relating to children who are privately fostered will be extended to include children who are proposed to be privately fostered;
- amend the definition of “Harm” to include harm caused to a child by seeing or hearing the ill-treatment of another person;
- include Female Genital Mutilation (FGM) Protection Orders in the list of Family Proceedings, with the effect that a court, when dealing with an application for an FGM Protection Order, can make other orders under the Children Order regarding the welfare of the child.

Changes to the Adoption Service

6. The measures to improve adoption support included in the Bill are intended to encourage more people to come forward to adopt and to help adoptive placements to succeed. The Bill places a duty on adoption authorities to make arrangements for the provision of adoption support services, according to arrangements to be set out in regulations. It also provides all new adopted children and adoptive parents with a new right to request an assessment of their needs for adoption support services. The assessment will link in with other Health and Social Care bodies and the Education Authority functions where the need for such services are identified, with the aim of identifying a co-ordinated package of support to help adoptions succeed.
7. To encourage more people to apply to adopt and to build confidence in the assessment process the Adopting the Future strategy committed the Department to provide an independent review where prospective adopters consider an adoption panel has turned down their application unfairly. The Bill includes powers enabling the Department to establish a mechanism to review adoption agency determinations. The Department will be able to appoint an independent body to review, at the prospective adopters' request, applications that adoption agencies have indicated they are minded to turn down.
8. The Bill also includes measures intended to tackle delays in the adoption process. It makes express provision to enable the Regional Board to establish a Northern Ireland Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters. The Register is intended to reduce delay both for adopters and children. The Bill also includes measures requiring courts to draw up timetables for resolving adoption cases without delay, and to give directions to ensure the timetable is adhered to.
9. The Bill changes the process of adoption itself and places the needs and welfare of children at the centre of the adoption process. The Bill makes the welfare of the child the paramount consideration for courts and adoption agencies in all decisions relating to adoption, including in deciding whether to dispense with a birth parent's consent to adoption. It provides a welfare checklist which must be applied by the court and adoption agencies. The paramountcy test brings adoption legislation into line with the Children Order.
10. The Bill establishes new legal processes for placing a child for adoption through an adoption agency. Two routes are provided: birth parents may give consent to placement or the adoption agency may secure a placement order from the court, authorising it to place a child with adopters whom they select. An adoption agency must apply for a

placement order where it is satisfied that a child should be adopted, but the parents do not consent to placement or have withdrawn such consent.

11. The intention is to ensure decisions about whether adoption is the right option for the child, whether the birth parents consented and, if not, whether parental consent should be dispensed with are taken earlier in the adoption process than at present, with court involvement where necessary. The system aims to provide greater certainty and stability for children by dealing as far as possible with consent to placement for adoption before they have been placed; to minimise the uncertainty for prospective adopters, who possibly face a contested court hearing at the adoption order stage; and to reduce the extent to which birth families are faced with a 'fait accompli' at the final adoption hearing.
12. The Bill reaffirms with amendment existing safeguards under the Adoption (Northern Ireland) Order 1987 that restrict who can lawfully arrange adoptions and advertise about adoption. This includes advertising about adoption through traditional media and electronically. It also provides restrictions on the preparation of certain reports and prohibits certain payments or rewards in connection with adoption.
13. The Bill also makes new provision for the disclosure to adopted people of information held by an adoption agency in connection with their adoption, and for access to their birth records. These provisions also cover the release of adoption agency information to birth relatives and others. The Bill provides for a single point of access to identifying information through adoption agencies, as the bodies best placed to provide the support and counselling needed for this sensitive task. The new regulatory framework for the disclosure of information about a person's adoption seeks to recognise the interests of all those involved. Regulations may be made under the Bill providing for the exercise of discretion by adoption agencies in this area to be reviewed by an independent panel that may be established by the Department. These provisions only apply to adoptions that take place after the Bill has been brought into force. For adoptions which took place prior to that, provision will be made for intermediary services to assist adopted adults to obtain information about their adoption and to facilitate contact between them and their birth relatives.
14. The Bill incorporates most of the provisions of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (the 2001 Act), which will largely be repealed when the Bill is implemented. The 2001 Act provides a statutory basis for the regulation of intercountry adoption. It enables Northern Ireland, to ratify the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, which was concluded at

the Hague on 29 May 1993 ("Hague Convention"). Section 12 also inserts Article 58ZA into the Adoption (Northern Ireland) Order 1987 which makes it an offence to bring children into the United Kingdom without following prescribed procedures. Article 58ZA is repealed and clause 82 of the Bill makes comparable provision relating to restrictions on bringing children into the United Kingdom for adoption.

15. To ensure that people living in the United Kingdom wishing to adopt a child from overseas follow the appropriate approval procedure, whether they adopt the child abroad or in the United Kingdom, the Bill enhances the safeguards in the 2001 Act. It incorporates the restriction in that Act on bringing a child into the United Kingdom for the purpose of adoption by a British resident, and provides a new restriction where a child is brought into the United Kingdom if he has been adopted by a British resident under an adoption order made under the law of a country outside the United Kingdom, the Channel Islands and the Isle of Man, which is not a Hague Convention adoption, within the previous six months.
16. The Bill also includes provisions to enable the Department to restrict adoptions from certain specified countries where there are concerns about practices in connection with the adoption of children. This aligns with current practice in England, Scotland and Wales.
17. The Department gave a commitment, following the consultation on its draft strategy, *Adopting the Future*, to introduce a new option for permanence, a special guardianship order. This is intended to meet the needs of children for whom adoption is not appropriate, but who cannot return to their birth parents and could benefit from the permanence provided by a legally secure family placement. For example, some older children (who may, for instance, be being looked after in long term foster placements) do not wish to be adopted and have their legal relationship with their parents severed, but could benefit from greater security and permanence. Adoption may also not be the best option for some children being cared for on a permanent basis by members of their wider family.
18. The Bill amends the Children Order to provide for the new special guardianship order. It sets out who may apply for an order, the circumstances in which orders may be made and their nature and effect. Special guardians must be aged 18 years or over. Joint applications for special guardianship may be made and people applying jointly need not be married or in a civil partnership. The court may also make special guardianship orders in any family proceedings if it considers an order should be made. In each application

the Health and Social Care Trust must assess the suitability of the applicants and prepare a report to the court. Unlike an adoption order, a special guardianship order may be varied or revoked by application, but only in limited circumstances.

19. A special guardian acquires parental responsibility for the child and may exercise it to the exclusion of others with parental responsibility, except in very exceptional circumstances. The intention is that, in order to provide the child with the stability he needs, the special guardian has clear responsibility for all the day to day decisions about caring for the child or young person and for taking the decisions about his upbringing. But, unlike adoption, the child's legal relationship with his birth parents is not severed. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited. They retain the right to consent, or not, to the child's placement for adoption or adoption. The Bill also provides for special guardianship support services to be provided, including financial support.

CONSULTATION

20. The Department of Health launched a public consultation on the draft Bill in early 2017. Since some time had elapsed from the Adopting the Future Strategy consultation, it was necessary to ensure that the policy content of the draft Bill reflected societal and legislative changes that had occurred elsewhere in the United Kingdom so that the Bill would align with practice (where appropriate) and legislation in other UK jurisdictions. All relevant consultation documentation, including the consultation paper, equality screening form etc. can be accessed through the Department of Health website at <https://www.health-ni.gov.uk/consultations/adoption-and-children-northern-ireland-bill>
21. The consultation was structured in three sections. Section 1 sought views on those provisions in the draft Bill that were previously consulted on in Adopting the Future. Section 2 sought views on those provisions in the draft Bill previously consulted on and where a different approach was being proposed. Section 3 sought views on new provisions included in the draft Bill which were not previously consulted on, for example, the introduction of post-adoption contact orders and the introduction of an independent review mechanism for an agency's determination in relation to approval of foster parents.
22. The Department has worked closely with key stakeholders and have consulted with a wide range of organisations across the public and voluntary sector who represent children and young people, and who have acted as a voice for them throughout the consultation

and in the ongoing stakeholder engagement process. In addition, a Young Person's version of the consultation document was provided to encourage views from children and young people during the consultation process. The Department commissioned Barnardo's NI to facilitate engagement with young people with a disability in order to gain their views on key proposals that were of particular relevance to them. Barnardo's NI consulted with children and young people aged between 13 and 19, who experience a range of physical and learning disabilities, including autism and visual impairment. The Voice of Young People in Care also prepared a separate consultation response based on their engagement with young people which included conversations with children and young people and a workshop with young people from all five Health and Social Care Trust areas.

23. Seventy one responses were received to the consultation, from a broad range of statutory, non- statutory/ voluntary organisations and individuals. The majority of respondents were in support of the proposals in the Bill.

OPTIONS CONSIDERED

24. The summary consultation report on the Adopting the Future strategy identified that certain recommendations could be taken forward on a non-statutory basis. For example, the placing of children in a dually approved placement (the child is placed with prospective adopters who are also approved foster carers to enable the child to experience permanence earlier, and thereby reduce the number of placements before adopted) and the creation of an Adoption Regional Information System to suggest matches between children waiting to be adopted and approved prospective adopters. However, the Bill now places these aspects on a statutory basis in order to continue to provide the same employment rights and access to benefits in relation to adoption/parental leave and pay, for example, and to strengthen safeguards in terms of matching information between prospective adopters and children.
25. Four options were considered in relation to the final content of the Bill, following consultation.
 - Option 1: Status quo, this would involve making no changes to the legislative framework that is already in place.

- Option 2: Introduce a Bill that contains all the proposed restated and new domestic and intercountry adoption provisions and the new/ amending provisions in relation to children's legislation, namely the Children Order.
 - Option 3: Introduce a Bill that contains all the proposed restated and new domestic and intercountry adoption provisions only.
 - Option 4: Introduce a Bill that contains only the new/amending provisions in relation to children's legislation, namely the Children Order.
26. The cost of each option was a primary consideration, especially in relation to Option 2. However, there is a need to align with recent adoption reforms in the rest of the United Kingdom, so that equity of treatment and compliance with Human Rights legislation and Conventions are maintained.
- Option 1: Given the complex nature of adoption and the huge impact it has on the lives of children and families, the development of adoption policy and legislation is considered to be an absolute priority. Current adoption legislation the Adoption (Northern Ireland) Order 1987, whilst it has been amended in parts, is based on an English equivalent from the 1970s and is out of date, has been subject to legal challenges, and is potentially out of step with various pieces of recent domestic equality legislation and European Conventions. There is disparity between adoption legislation in Northern Ireland and other UK regions. Likewise, the relevant children's legislation, the Children Order, is now more than 25 years old and is out of date compared to equivalent children's legislation in other jurisdictions.
 - Option 2: The Department's key aim is to enhance the existing legal framework for adoption, the Adoption (Northern Ireland) 1987 Order, to make it more consistent with the principles and provisions of the Children Order, and international human rights requirements, in particular the UN Convention on the Rights of the Child. The Bill will tackle issues identified, for example, in relation to uniformity in the assessment of adoption support needs including the assessment and provision of financial support; access to adoption information, tackling delay, introduce an alternative route to permanence, other than adoption, for those children that cannot live at home, enhance the provision available to care leavers; place concurrent planning and dual approval on a statutory basis and make greater safeguards in intercountry adoption to afford better protection for the children involved.

- Option 3: The provisions amending the Children Order would not be taken forward under the Bill in Option 3. Key provisions include placing concurrent planning and dual approval on a statutory basis, and the introduction of the Special Guardianship Order. The Special Guardianship Order provides an alternative route to permanence for a child where adoption is neither appropriate nor wanted by the child. It has long been recognised in Northern Ireland that fostering can be a route to adoption, particularly in situations where children have lived for several years with their foster carers with no immediate prospect of return to the birth family. The practice of dually approving suitable families as both foster and adoptive carers has been ongoing in Northern Ireland for some time. However, to ensure that a duty is placed on Health and Social Care Trusts to consider such a placement requires an amendment to Article 27 of the Children (Northern Ireland) Order 1995. It is imperative that there is uniformity of practice in relation to concurrent planning and dually approved placements. It is also considered essential that there should be no further delay in bringing forward provision which has the potential to improve the lives of children and young people in care, provide additional options for permanence and improve the support for those young people leaving the care system.
- Option 4: A stand-alone Bill which amends the Children Order only and which will not bring forward much needed adoption legislative reform cannot be considered on the grounds stated above in relation to the status quo at Option 1.

27. Option 2 is the preferred Option, on the grounds stated above.

OVERVIEW

28. The Bill replaces the Adoption (Northern Ireland) Order 1987 and reforms the existing legal framework for domestic and intercountry adoption in Northern Ireland. It also consolidates the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001. In the 2001 Act, sections 1 and 2 (regulations to give effect to the Convention and Central Authorities) and Schedule 1 (the text of the Hague Convention so far as material), are to continue in force. The remaining provisions will cease to apply and will instead be incorporated into the Bill. The Bill will affect all adoptions and arrangements for adoption of children in Northern Ireland and all adoption applications from persons resident in Northern Ireland who seek to adopt children living abroad. The current mutual recognition of adoption and cross border placement for adoption between England, Wales, Scotland and Northern Ireland will continue.

29. The Bill has three Parts:

- Part I sets out the framework for adoption law for Northern Ireland. Chapter 1 provides for the welfare of the child to be paramount (*clause 1*). Chapter 2 covers the Adoption Service. It places a duty on adoption authorities in Northern Ireland to maintain an adoption service, which includes making arrangements for the adoption of children and for the provision of adoption support services (*clause 4*); provides a statutory right to request an assessment for adoption support (*clause 5*); enables the Department to establish a new independent review mechanism to consider determinations made by adoption agencies about the suitability of prospective adopters (*clause 12*); inspection of premises (*clause 14*). Chapter 3 covers placement for adoption and adoption orders. It introduces placement by consent and placement orders (*clauses 15 to 26*); makes provision for the removal of children who are or may be placed for adoption (*clauses 27 to 32*); makes provision for adoption orders (*clauses 43 to 48*). It also makes provision for disclosure of information prior to and following a person's adoption (*clauses 53, 55 to 64 and 102*). Chapter 4 covers the status of adopted children (*clauses 65 to 75*). Chapter 5 makes provision for the Adopted Children Register (*clauses 76 to 78*) and the Adoption Contact Register (*clauses 79 to 81*). Chapter 6 makes provision for intercountry adoption (*clauses 82 to 95*). Chapter 7 covers miscellaneous provisions. It makes provision for offences relating to making arrangements for adoption (*clause 97*), and making certain payments (*clause 99*).
- Part 2 makes amendments to the Children (Northern Ireland) Order 1995; it provides for the definition of family proceedings to include Part 2 of Schedule 2 to the Female Genital Mutilation Act 2003 (*clause 116*); provides for an authority foster parent to apply for an Article 8 order if the child has lived with him for one year rather than three years (*clause 117*); provides for the extension of residence orders for looked after children (*clause 118*); introduces special guardianship orders (*clause 119*); a duty to ascertain children's wishes and feelings (*clause 120*); the provision of services to children in need (*clause 121*); duties of authorities to promote educational achievement and prevent disruption of education and training in respect of looked after children (*clause 122*); introduces corporate parenting principles (*clause 123*); placement of looked after children with prospective adopters (*clause 124*); power to specify additional requirements before authorities place children in accommodation (*clause 125*); a power to prescribe arrangements for the approval of authority foster parents and the establishment of an independent review mechanism for foster approval decisions (*clause 126*); duties on authorities to ensure visits to, and advice is provided to, looked after children (*clause 127*); improve services and support to care leavers

(clauses 128 and 129); enhance arrangements around inquiries into representations including complaints (clause 130); duty for an authority to conduct reviews in respect of looked after children's cases (clause 131); place advocacy services on a statutory basis (clause 132); amend the definition of harm (clause 133); place care planning on a statutory basis (clause 134); enable an authority to refuse contact between a child and their birth parent if such contact is not consistent with their safeguarding or well-being (clause 135); renaming of guardians ad litem, specified proceedings and appointment of children's court guardians (clauses 136 to 138); strengthen arrangements for privately fostered children (clauses 139 to 141); provide that it is not an offence to enter or search and access the Northern Ireland Adoption and Children Register (clause 142); and remove the requirement for the Department to produce an annual report (clause 143).

- Part 3 makes miscellaneous provision, including establishing the Northern Ireland Adoption and Children Act Register *(clauses 144 to 151)*.

30. The Bill contains five Schedules:

- Schedule 1: Registration of Adoptions.
- Schedule 2: Disclosure of Birth Records by Registrar General
- Schedule 3: Minor and Consequential Amendments.
- Schedule 4: Transitional and transitory provisions and savings.
- Schedule 5: Repeals.

COMMENTARY ON CLAUSES

Part 1 - Adoption

Chapter 1 – Introductory

Clause 1: Considerations applying to the exercise of powers

Clause 1 is an overarching provision that will apply whenever a court or an adoption agency (a Health and Social Care Trust or an appropriate voluntary organisation) is coming to any

decision relating to the adoption of a child. This includes any decision by the court about whether or not to dispense with parental consent to adoption, or to make a contact order in respect of a child under clause 23 or 49. The Bill introduces into adoption law principles already in the Children (Northern Ireland) Order 1995 (the Children Order). The paramount consideration of the court or adoption agency in any decision is the child's welfare (*subsection (2)*). This brings the welfare test into line with that in the Children Order, with the important addition that the court or adoption agency must consider the child's welfare throughout his life, in recognition of the lifelong implications of adoption. The court or adoption agency must also bear in mind that in general any delay is likely to prejudice the child's welfare (*subsection (3)*).

A welfare checklist is set out in *subsection (4)* and must be applied by the court or agency in determining the best interests of the child in any decision relating to adoption. This is modelled on the equivalent provision in the Children Order, but is tailored to address the particular circumstances of adoption. It includes a requirement on the court and adoption agency to consider the value to a child of a stable and harmonious family unit. The court and the adoption agency must have regard to the child's ascertainable wishes and feelings about the decision (having regard to his age and understanding) and to his particular needs (for example, physical or educational). It also obliges the court or adoption agency to have regard to the relationship the child has with his relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, and the prospects of, and benefits to, the child of this relationship continuing, the ability of his relatives to provide the child with a secure home and to meet his needs, and their views concerning the decision relating to the adoption of the child. 'Relative' includes the child's mother and father – see *subsection (8)*. *Subsection (5)* provides that in placing a child for adoption, the agency must give due consideration to the child's religious persuasion, racial origin, cultural and linguistic background. This is in line with the duty placed on an authority by Article 26(3)(c) of the Children Order, when they take any decision about a looked after child, including where they should be placed.

In taking any decision relating to the adoption of a child, the court or adoption agency will have to consider the whole range of powers available to it under this Bill and the Children Order and a court may only make an order where it considers that it would be better for the child than making no order (*subsection (6)*).

"Coming to a decision relating to the adoption of a child", in relation to a court, is defined at *subsection (7)* and includes decisions in any proceedings where the orders that might be made by the court include an adoption order or placement order (or the revocation of such an order) or an order under section 23 or 49 (or the revocation or variation of such an order), and coming

to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an adoption agency or individual under this Bill. It does not include coming to a decision about granting leave in any other circumstances.

Chapter 2 – The Adoption Service

Chapter 2 makes provision for the structure of the adoption service. Some of the sections remodel provisions of the Adoption (Northern Ireland) Order 1987. This Chapter also underpins some important areas of new policy dealing with adoption support services (including financial support) and independent reviews of qualifying determinations (see clause 12).

Clause 2: Basic Definitions

This clause sets out some basic definitions. *Subsection (1)* provides that the services provided under clause 4(1) are to be known as "the Adoption Service" and that an adoption authority or an appropriate voluntary organisation may be referred to as an "adoption agency" (*subsection (2)*). An "appropriate voluntary organisation" is a voluntary organisation which is an adoption society in respect of which a person is registered; but in relation to the provision of any facility of the Adoption Service, references to an appropriate voluntary organisation or to an adoption agency do not include an adoption society if the registration is not in respect of that facility (*subsection (3)*). An "adoption society" is a body whose functions consist of or include making arrangements for the adoption of children. Registered means registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and registration means registration under that Order (*subsection (5)*). Registration in respect of an adoption society is treated as registered in respect of any facility of the Adoption Service for the purposes of the Bill unless it is a condition of its registration that it may not provide that facility (*subsection (4)*).

Subsection (6) provides that adoption support services include counselling, advice and information in relation to adoption. Regulations will set out what other services are to fall within this definition. *Subsection (7)* provides that the Department must exercise the power under subsection (6)(b) to make regulations so as to secure that adoption authorities provide financial support.

Subsection (8) states that the references in this Chapter to adoption are to the adoption of persons wherever they may be habitually resident, effected under the law of any country or territory.

Clause 3: Adoption Authority

This clause provides that every Health and Social Care trust (HSC trust) is the adoption authority for its own area (*subsection (1)*), but regulations may provide that, in relation to prescribed functions or services under this Bill, another HSC trust may be the adoption authority in relation to that area (*subsection (2)*). This provision enables the Department to specify that one HSC trust may manage and provide prescribed adoption services on behalf of another or other HSC trusts. An HSC trust is defined in the Bill as a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991, except for the Northern Ireland Ambulance Service, and references to an area of an HSC trust are to the area prescribed by regulations as to the area of that trust for the purposes of this Bill (*subsection (3)*). *Subsection (4)* provides that regulations may amend the definition of an HSC trust in *subsection (3)*. The Regional Board is the adoption authority in relation to any area to which there would otherwise be no adoption authority (*subsection (5)*).

Clause 4: The Adoption Service

Under clause 4, every adoption authority must maintain within their area an adoption service designed to meet the needs, in relation to adoption, of children who may be adopted, their parents and guardians; persons wishing to adopt a child; and adopted persons, their parents, natural parents and former guardians, and for that purpose must provide the requisite facilities (*subsection (1)*). Facilities must include making, and participating in, arrangements for the adoption of children and for the provision of adoption support services (*subsection (2)*). In addition to the duty to make arrangements for the provision of adoption support services to the categories of persons listed in *subsection (1)*, *subsection (3)(a)* places a duty on the adoption authority to make arrangements for the provision of adoption support services to persons prescribed in regulations. *Subsection (3)(b)* provides that an adoption authority may also extend the provision of such services to other persons.

Adoption authorities may meet their obligation to provide the requisite facilities by ensuring that they are provided by an appropriate voluntary organisation, or in relation to the provision of adoption support services of a prescribed description, a voluntary organisation, or such other persons as may be specified in regulations (*subsection (4)*). A “voluntary organisation” is defined in clause 158 as a body (other than a public body) the activities of which are not carried on for profit. *Subsection (5)* provides that facilities of the adoption service must be provided in conjunction with any other social care provided by an adoption authority, with appropriate voluntary organisations and with voluntary organisations providing facilities under *subsection*

4(a), so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.

Subsection (6) provides that “social care” has the meaning given by section 2(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (and, in particular, social care in so far as it relates to children).

The provisions in clauses 2, 3 and 4 will be used to give effect to the new framework for adoption support services, including financial support.

Clause 5: Assessments etc. for adoption support services

An adoption authority must, under clause 5, carry out an assessment of the needs for adoption support services of any of the persons mentioned in clause 4(1) (that is, children who may be adopted, their parents and guardians; persons wishing to adopt a child; and adopted persons, their parents, natural parents and former guardians) or any other person of a prescribed description, at that person's request.

The assessment will provide a mechanism to assist in accessing adoption support services. It is intended that the assessment will provide a means of facilitating the provision of a planned and co-ordinated support package. It will link with other HSC trusts' functions, including other health services, and services provided by the Education Authority, where the needs for such services are identified, with the aim of identifying a co-ordinated package of support to help adoptions succeed.

Regulations made under *subsection (8)(a)* may set out the circumstances in which the categories of person prescribed in the regulations made under *subsection (1)(b)* are to have a right to request and receive an assessment. An adoption authority may also carry out an assessment of the needs of any other person for adoption support services (*subsection (2)*). Adoption authorities may call upon the expertise of an appropriate voluntary organisation, a voluntary organisation, or persons prescribed in the regulations made under clause 4(4)(b) to assist them in carrying out an assessment (*subsection (3)*).

Under *subsection (4)*, where a person's needs for adoption support services are identified in an assessment, the adoption authority must decide whether to provide adoption support services to that person. If the person is within a prescribed description, the adoption authority must provide them with adoption support services (*subsection (5)*). Where an adoption authority decides to provide services, or it is under a duty to do so, the adoption authority will be required,

in prescribed circumstances, to prepare a plan for the provision of services and keep the plan under review (*subsection (6)*). It is intended that a plan will be required where a number of different adoption support services are being provided, in order to co-ordinate the provision of those services.

Subsections (7) and (8) provide a power to make provision in regulations about the carrying out of assessments, including considerations to be taken into account during the assessment, preparing and reviewing plans, the provision of services in accordance with plans and reviewing the provision of adoption support services. These regulations will underpin the delivery of the new framework for adoption support including financial support. Regulations under subsection (8)(b) may set out the type of assessment which is to be carried out for each of the categories of person mentioned in clause 4(1) and anyone else who receives an assessment for adoption support services. Regulations under subsections (8)(f) and (g) may set out the circumstances in which adoption support services may be provided subject to conditions and the consequences of failure to comply with any such conditions. It is anticipated that regulations could, for example, be used to enable an adoption authority to specify that financial support must be spent on specified items or services and that sums given may be recouped where they are not spent accordingly. This may be appropriate where a one-off grant is being paid for a specific purpose, but is unlikely to be appropriate for a regular adoption allowance. Regulations made under subsection (8)(h) may set out where the responsibility for carrying out an assessment and the provision of any adoption support services lies in cases where a child is placed with an adoptive family living in a different HSC trust area, together with funding arrangements. This is intended to ensure that it is clear which HSC trust is to provide adoption support services where a child is placed across HSC trust boundaries.

An assessment for adoption support under this provision may be carried out at the same time as an assessment of that person's needs under any other statutory provision (*subsection (9)*). This provision clarifies that an assessment for adoption support services may link with other statutory assessments of an individual's needs. If at any time during the assessment it appears to the adoption authority that the person may need services which are provided by another health and social care body or by the Education Authority, the adoption authority must notify the body or the Education Authority. *Subsections (9) and (10)* are intended to promote the joined up provision of public services in support of adoption.

Subsections (11) and (12) impose a duty on public bodies to co-operate in the exercise of functions under this clause if it is consistent with the exercise of their functions more generally.

Clause 6: Adoption Support services: duty to provide information

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Subsection (1) places a new duty on adoption authorities to provide a range of information about adoption support services and other prescribed information to any person who has contacted the adoption authority to request information about adopting a child, or has informed the adoption authority that they wish to adopt a child. Adoption authorities must also provide such information to any person within their area who they are aware is the parent of an adopted child or to any such person upon request. This subsection also makes provision for regulations to prescribe the circumstances in which an adoption authority does not need to provide the information.

Subsection (2) sets out the information that the adoption authority must provide, including information about the adoption support services available to people in the adoption authority's area and information about the right to request an assessment for adoption support services. It also makes provision for regulations to prescribe other information that must be provided by the adoption authority.

Clause 7: Arrangements on cancellation of registration

Where a body ceases to be an appropriate voluntary organisation by virtue of the cancellation of its registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, clause 7 empowers the Department to direct that organisation to make appropriate arrangements for the transfer of the organisation's functions relating to children.

Clause 8: Inactive or defunct adoption societies etc.

Clause 8 empowers the Department to direct the relevant adoption authority to take action where an appropriate voluntary organisation is inactive or defunct or where a body has ceased to be an appropriate voluntary organisation by virtue of the cancellation of its registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and it has not made such arrangements for the transfer of its functions relating to children as are specified in a direction given by the Department. Before giving such a direction the Department, if practicable, should consult with both the organisation and the adoption authority. It also enables the Department to charge the organisation for the expenses necessarily incurred by it or on its behalf as a result of its failure to make appropriate arrangements.

Clause 9: General power to regulate adoption agencies

Clause 9 enables regulations to be made in respect of adoption agencies (i.e. adoption authorities and appropriate voluntary organisations). *Subsection (1)* provides a general power to make regulations for any purpose relating to the exercise by adoption agencies of their functions in relation to adoption. *Subsection (2)* provides that the power to make regulations under clause 9 is not limited by the specific powers in clauses 10 to 12, 42, 53, 55 to 64 and 102, or by any other powers exercisable in respect of adoption agencies. *Subsection (3)* enables regulations to be made under this provision to provide that a person who breaches those regulations commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Clause 10: Management etc. of agencies

Clause 10 amplifies the general regulation-making power in clause 9 in relation to the management and general operation of adoption agencies. *Subsection (1)* provides for regulations to be made in respect of adoption authorities and appropriate voluntary organisations to ensure that they are suitably managed and staffed, that their premises are fit for the purpose and that adequate arrangements are made for the keeping of information.

Subsection (2) provides that regulations may be made under subsection (1) prohibiting a person's appointment to a prescribed post within an adoption agency unless they are registered in, or in a particular part of, the register maintained under section 3 of the Health and Personal Social Services Act (Northern Ireland) 2001.

The powers in *subsection (3)* apply only to appropriate voluntary organisations. In the case of adoption authorities, such powers are either inappropriate or unnecessary because any child placed, or authorised to be placed, for adoption by an adoption authority is to be treated as a looked after child. Regulations may be made to ensure that appropriate voluntary organisations are managed by persons who are fit to do so, and for the health and welfare of children placed by appropriate voluntary organisations to be adequately protected. *Subsection (3)* also provides that regulations may be made imposing requirements regarding the financial position of the organisation and the appointment of a manager.

Subsection (4) sets out that regulations may be made concerning the conduct of appropriate voluntary organisations, including the provision of facilities and services; the keeping of accounts; notification to the RQIA of events occurring in the organisation's premises; notification to the RQIA and making arrangements for the running of the organisation when its manager is absent, and specifying the information to be given in such a notice; changes in the person managing the organisation and changes in its ownership or the identity of its officers,

and the payment of a prescribed fee in respect of any notification of change of ownership; and arrangements for dealing with complaints.

Clause 11: Fees

Clause 11 amplifies the powers in clause 9 in relation to the charging and payment of fees. *Subsection (1)* enables the Department to make regulations providing for the fees which may be charged by adoption agencies for the provision of prescribed services to those providing facilities as part of the Adoption Service (including Adoption Services in Great Britain, the Channel Islands and the Isle of Man), and for the fees to be paid by adoption agencies to those providing services on their behalf or assisting in providing those services. This power could, for example, be used to make regulations to underpin or make changes to the “inter-agency fee” (a payment currently made by an adoption agency to another adoption agency which has recruited an adoptive family on its behalf). The power could also be used to make regulations to enable payments to persons assisting in the assessment of adopters, such as members of adoption panels.

Subsection (2) enables the Department to make regulations prescribing the fees which may be charged by an adoption authority in respect of prescribed facilities of the Adoption Service, provided that the conditions in *subsection (3)* are met. The conditions are that the facilities must be provided in connection with the adoption of a child brought into the United Kingdom for the purpose of adopting the child, or in connection with a Convention adoption, an overseas adoption or an adoption effected under the law of a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man.

It is intended that any charges provided for by these regulations will contribute towards an adoption authority's costs in providing information, preparing and assessing prospective adopters, obtaining medical reports and police checks and preparing post-placement and post-adoption reports in respect of inter-country adoption cases. They will not include any element of profit.

Subsection (4) enables regulations to prescribe the fees which may be charged by an adoption agency in respect of the provision of counselling provided in connection with the disclosure of information in relation to a person's adoption. This means that regulations may enable adoption authorities as well as appropriate voluntary organisations to charge fees for the provision of such counselling services. It also provides for those fees to be regulated. It is intended to provide for an adoption authority or appropriate voluntary organisation to be able to charge a fee to any person, other than an adopted person, who is receiving counselling in connection

with the disclosure of information about an adoption made before the Bill is implemented. The fee may only be for the reasonable costs incurred by the adoption agency for the provision of the counselling.

Clause 12: Independent review of qualifying determinations of adoption agencies

Clause 12 amplifies the powers in clause 9 in relation to the establishment of a review procedure in respect of qualifying determinations made by adoption agencies. A person in respect of whom a qualifying determination, specified in regulations, has been made may apply to a panel established by the Department for a review of the relevant determination. It is intended to use this provision to provide prospective adopters with a right to request a referral to a panel where an adoption agency indicates that it is minded to turn down their application to adopt.

It is also intended that the independent review mechanism will review qualifying determinations made by adoption agencies concerning the disclosure of protected information (defined in clause 56) held by the adoption agency where, under regulations made under the Bill, the adoption agency has discretion as to whether to disclose such information.

Regulations may be made under *subsection (3)* dealing with the duties and powers of a panel, administration and procedures, appointment of panel members, payment of fees, the duties of adoption agencies in connection with reviews and the monitoring of reviews.

Subsection (4) provides that regulations made under subsection (3)(e) may enable the Department to request a contribution towards the cost of a review from the adoption agency that made the original determination. *Subsections (5) and (9)* provide that the sums payable to the Department must not, taking one financial year with another, exceed the costs incurred in performing the independent review functions.

Subsection (6) enables the Department to make an arrangement for an organisation to carry out the functions in relation to the panel on its behalf. "Organisation" is defined in *subsection (10)* as including a public body and a private or voluntary organisation. *Subsection (8)* enables the Department to make payments to such an organisation and under *subsection (7)* the organisation must perform its functions in accordance with any directions which the Department may give.

Clause 13: Information concerning adoption

Clause 13 requires adoption agencies to give the Department statistical or other general information relating to adoption as may be required. The information required is in respect of the agency's performance of all or any of its functions relating to adoption, and in respect of the children and other persons in relation to whom it has exercised those functions. Information must be provided at the time and in the form directed by the Department. *Subsection (3)* empowers the Department to publish abstracts of the particulars sent to it.

Clause 14: Inspection of premises etc.

Clause 14 provides for a person authorised by the Department to inspect any premises where a child who has been placed by an adoption agency, or a child in respect of whom a notice of intention to adopt has been given under clause 41, is or will be living. *Subsection (4)* enables a person carrying out an inspection of premises under *subsection (1)* to visit the child there and examine the state of the premises and the treatment of the child. *Subsection (2)* enables the Department to require an adoption agency to give it information and access to records (in whatever form) relating to the discharge of its functions in relation to adoption. *Subsection (5)* provides for the inspection of any computer and associated apparatus being used in connection with an adoption agency's records.

Subsection (3) provides that inspections under this section must be conducted by a person authorised by the Department and *subsection (6)* gives any such authorised person a right of entry to premises at any reasonable time and a right to request reasonable assistance. He must, if required, produce documentation showing his authority to carry out the inspection (*subsection (7)*). Obstructing a person authorised to inspect premises or records is an offence, punishable on summary conviction by a fine up to level 3 on the standard scale (*subsection (8)*).

Chapter 3 - Placement for Adoption and Adoption Orders

In this Bill, Freeing Orders as provided for in Article 17 & 18 of the Adoption (Northern Ireland) Order 1987 are replaced with a new pre-adoption order, a 'placement order'. This order retains the successful aspects of freeing but provides a more effective balance of the competing interests in the adoption process, primarily establishing a clearer focus on the child's welfare as paramount and the rights of the child.

Clauses 15 to 26 introduce new provisions for the placement of children for adoption. An adoption agency may (except in the case of a child who is less than 6 weeks old) only place a child for adoption with the consent of the parent or guardian (referred to in these notes as the

'parent') under clause 16 or under an order made by the court authorising an adoption authority to place a child with any prospective adopters chosen by them ("a placement order"- see clause 18). Adoption authorities are not required to have identified a potential placement to obtain the order. Provision is made for who is to have parental responsibility for the child and the other consequences of placement with consent and placement orders.

The intention is to ensure key decisions are taken earlier in the adoption process than at present, with court involvement where necessary. This is intended to provide greater certainty and stability for children by dealing with consent to placement for adoption before they have been placed (at present this issue is often not addressed until the final adoption order hearing); to minimise the uncertainty for prospective adopters who, under the current system, possibly face a contested court hearing at the adoption order stage; and to reduce the extent to which birth families are presented with a 'fait accompli' at the final adoption hearing (as they may be under the current system, where their child has not been freed for adoption but has been placed with an adoptive family for some time before the application for an adoption order is made).

Clause 15: Placement for adoption by agencies

Subsection (1) provides that an adoption agency (except in the case of a child who is less than 6 weeks old) may only place a child for adoption with prospective adopters where the parent of the child has consented to the placement or, in the case of an adoption authority, where it has obtained a placement order. *Subsection (2)* provides that an adoption agency may not place a child for adoption with prospective adopters unless the agency is satisfied that the child ought to be placed for adoption. Where a child is placed or authorised to be placed for adoption by an adoption authority, the child is a looked after child for the purposes of the Children Order (*subsection (3)*).

An adoption agency may place a child who is less than 6 weeks old ("baby placement") for adoption with the voluntary agreement of the parent or guardian. Regulations made under clause 9 will set out the process for obtaining this agreement. *Subsection (3)* applies to any such child placed by an adoption authority. When the child reaches the age of 6 weeks and adoption remains the plan, the adoption agency should obtain the consent of the parent or a placement order.

Subsection (4) provides that an adoption agency may not place a child for adoption where an application for an adoption order for that child has been made and has not been disposed of. Where the agency has already placed the child with the applicants, it may keep the child with

them until the application is disposed of, but apart from that, the adoption agency may not place the child with any other prospective adopters.

Under *subsection (5)*, placement has been given an extended meaning covering both placing a child with prospective adopters and, where the child is already placed with people for other purposes (for example with foster carers), keeping the child with them as approved prospective adopters. This is intended to reflect circumstances where a child is in a foster care placement with carers who have been dually approved as both foster carers and prospective adopters to minimise the number of moves the child may have to make. It will also be open to authority foster parents to seek formal approval as prospective adopters in respect of a child being fostered by them. If they are approved as prospective adopters and the agency keeps the child with them as prospective adopters, the placement will be an agency placement and there will be no need for them to give formal notice of intention to adopt under clause 41. If the adoption agency does not approve them as prospective adopters, authority foster carers can independently give notice of intention to apply to adopt the child as a non-agency case, providing the condition in clause 39(4) is met i.e. that the child has had his home with the applicants at all times during the period of one year preceding the application.

Under *subsection (6)* references in Chapter 3 to an adoption agency being, or not being, authorised to place a child for adoption are to the agency being, or not being, authorised to do so under clause 16 (placing children with parental consent) or a placement order. This means that, where a child who is less than 6 weeks old is placed for adoption, clause 22 (Parental Responsibility), for example, will not apply.

Clause 16: Placing children with parental consent

Clause 16 makes provision for placing children with parental consent. It allows an adoption agency to place a child for adoption where it is satisfied each parent or guardian has given consent to placement and that consent has not been withdrawn. Placement with consent may be with prospective adopters identified in the consent or with any prospective adopters who may be chosen by the agency (*subsection (1)*). Consent to placement with prospective adopters identified in the consent may be combined with consent to the child being subsequently placed for adoption with any prospective adopters who may be chosen by the agency in circumstances where the child is removed from or returned by the identified prospective adopters (*subsection (2)*). Consent can be withdrawn at any point before an application for the adoption order is made.

Subsection (3) provides that where an application has been made on which a care order under the Children Order might be made and that application is pending, the provisions relating to placement of children with parental consent do not apply. Where an adoption authority is satisfied such a child should be adopted, it must apply for a placement order under clause 19(2). Where a child is placed for adoption with consent and a care order or a placement order is subsequently made in respect of the child, the authority to place for adoption provided as a result of the earlier clause 16 consent no longer applies. Where a child is placed for adoption with consent and a special guardianship order is subsequently made in respect of the child, the authority to place no longer applies unless the special guardian consents, as their consent is required under clause 16(1). Where a child is placed with prospective adopters and consent is then withdrawn, the child continues to be treated as placed for adoption until the child is returned to the parents or any placement order application is determined (*subsection (4)*). Clause 16 is subject to the provisions in clause 51 relating to what is meant by consent. Consent must be given in a form prescribed for in court rules.

Clause 17: Advance consent to adoption

Clause 17 enables a parent who consents to his child being placed for adoption by an adoption agency to give consent at the same time to the making of a future adoption order ('advance consent'). As with placement with consent, advance consent may be to adoption by prospective adopters identified in the consent or by any prospective adopters who may be chosen by the agency (*subsection (2)*). *Subsection (3)* provides that consent may be withdrawn. It must be withdrawn by notice in writing to the agency or in the form prescribed (see clause 51(8)). *Subsection (4)* enables a parent who gives advance consent to adoption to give notice to the agency that he does not wish to be informed when an application for an adoption order is made, and to withdraw any such notice. This provision allows a parent who wishes to relinquish their child for adoption to do so, and to provide that they need have no further involvement in the adoption proceedings.

Subsection (6) provides that clause 17 is subject to the provisions in clause 51 relating to what is meant by consent.

Clause 18: Placement orders

Clause 18 defines a placement order. It is an order made by the court authorising an adoption authority to place a child for adoption with any prospective adopters who may be chosen by the authority (*subsection (1)*). Only an adoption authority is able to apply for a placement order. *Subsection (2)* provides that the court may not make a placement order unless the child

is already subject to a care order or it has the power to make a care order under Article 50(2) of the Children Order. In order to be able to make a care order (and therefore a placement order) the court must first be satisfied that the child concerned is suffering, or is likely to suffer, significant harm, and that this is attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him, or the child is beyond parental control. The only exception to this is where the child has no parent or guardian. In these cases, the 'significant harm' threshold in Article 50(2) of the Children Order does not apply. This is to allow an authority to place orphaned children for adoption.

Linking the making of placement orders to these provisions in the Children Order is intended to deliver on the 'Adopting the Future' proposal to align adoption law with the Children Order. The same threshold for compulsory intervention in family life is to apply where an adoption authority seeks authority to place a child for adoption without parental consent as applies where an authority seeks to take a child into care under a care order. In placement order cases, where the court is satisfied that the 'significant harm' threshold is met, it will then consider whether a placement order should be made. The clause 1 provisions will apply: the child's welfare will be the paramount consideration; the court will apply the welfare checklist set out in clause 1(4); the court will have to consider its full range of powers; and will only make the order if it is better for the child than not to do so.

Subsection (3) provides that the court may only make a placement order if it is satisfied that the parent has consented to the child being placed for adoption with any prospective adopters who may be chosen by the agency and has not withdrawn that consent or that the parent's consent should be dispensed with. The grounds for dispensing with consent are set out in clause 51(1). A placement order will continue in force until it is revoked, an adoption order is made in respect of the child or the child marries, forms a civil partnership or reaches the age of 18 (*subsection (5)*).

Clause 19: Applications for placement orders

Clause 19 sets out when an adoption authority must apply for a placement order. An adoption authority must apply for a placement order when the child is placed for adoption or is accommodated by an adoption authority; they are satisfied that the child ought to be placed for adoption; no adoption agency is authorised to place the child for adoption; and either the child has no parent or guardian or the authority consider the threshold criteria in section 50(2) of the Children Order are met (*subsection (1)*). This might occur for example where the parent has

withdrawn consent to placement for adoption but the authority remains of the view the child should be adopted.

Where an application is pending on which a care order under the Children Order might be made, or the child is subject to a care order but the parent does not consent to the placement of a child for adoption, and the authority is satisfied that the child should be placed for adoption, it must apply to the court for a placement order (*subsection (2)*). If the child is subject to a care order and the parent or guardian is prepared to consent to the placement of the child for adoption, an authority has the discretion as to whether to apply for a placement order (*subsection (3)*). Alternatively, it could decide to place the child with parental consent under clause 16.

Subsection (4) provides that where an adoption authority is under a duty to apply for a placement order or an application for a placement order is pending, or has applied for a placement order and the application has not been disposed of, the child is a looked after child for the purposes of the Children Order until the application is determined. If a placement order is made, the child continues to count as looked after by virtue of clause 15(3). *Subsection (5)* provides that subsections (1) to (3) do not apply if any persons have given notice of intention to adopt, unless they have not applied for an adoption order within four months of giving such notice; their application for such an order has been withdrawn or refused; or an application for an adoption order has been made and has not been disposed of.

Subsection (6) enables the court, where the application for a placement order is pending and no interim care order has been made, to give directions for the child to undergo medical, psychiatric or other assessment.

The application for a placement order is to be made by the appropriate authority as defined in *subsection (7)*.

Clause 20: Varying placement orders

Clause 20 provides that the court can vary a placement order to substitute another adoption authority for the adoption authority authorised to place the child for adoption but the application has to be made by both authorities.

Clause 21: Revoking placement orders

Clause 21 makes provision for the revocation of placement orders. *Subsection (1)* provides that a court may, on the application of any person, revoke a placement order. A person, other

than the child or the adoption authority authorised by the placement order to place the child for adoption, may only make such an application if the court has given leave to apply and the child is not yet placed for adoption by the adoption authority (*subsection (2)*). Leave cannot be given by the court unless it is satisfied that there has been change in circumstances since the order was made (*subsection (3)*).

Subsection (4) provides that a court may revoke a placement order if, at the final adoption order hearing, it decides not to make an adoption order in respect of the child. It may be that the court decides not to make the adoption order because it considers that the child should not be placed for adoption, in which case it may revoke the placement order. Alternatively, if the court considers that the child should still be placed for adoption with a view to being adopted at a future date, it may decide that the placement order shall continue.

Subsection (5) provides that where an application for a revocation of a placement order has been made and has not been disposed of and the child is not placed for adoption, the leave of the court is required before the child can be placed for adoption under the placement order.

Clause 22: Parental responsibility

Clause 22 makes provision for who is to have parental responsibility where a child is placed for adoption under clause 16 (placement with consent) or an adoption agency is authorised to place a child for adoption under that clause, or where a placement order is in force. Once consent to placement under clause 16 is given, or a placement order is made, the adoption agency has parental responsibility for the child (*subsection (2)*) and while a child is placed with prospective adopters, parental responsibility is given to them (*subsection (3)*). The child's parents retain parental responsibility throughout the process, up to the point at which an adoption order is made. Under *subsection (4)* the agency may determine the extent to which the parental responsibility of any parent or guardian or of prospective adopters is to be restricted.

Clause 23: Contact

Clauses 23 and 24 make provision for applications for contact in respect of children placed for adoption and where an adoption agency is authorised to place a child for adoption under clause 16 or under a placement order. *Subsection (1)* of clause 23 provides that where an adoption agency is authorised to place a child for adoption, or a child who is less than 6 weeks old is placed for adoption, any provision for contact under Article 8 or Article 53 (parental contact with children in care) of the Children Order ceases to have effect, as the arrangements set out

in previous contact orders may no longer be appropriate. The objective should be to agree whatever new arrangements for contact are appropriate given the adoptive placement. However, if agreement cannot be reached, an application may be made to the court for an order for contact. Such an application may be made by the child or the adoption agency or the parent or other persons who are identified in *subsection (3)*.

On an application, the court may make an order requiring the person with whom the child lives or is to live to allow the child to visit or stay with the person named in the order or for that person and the child otherwise to have contact with each other (*subsection (2)*). The court may also, on its own initiative, make an order under this clause when making a placement order (*subsection (4)*).

Clause 24: Contact: supplementary

Clause 24 makes supplemental provision in relation to contact. *Subsection (1)* provides that an order under clause 23 has effect while the adoption agency is authorised to place the child for adoption or while the child is placed for adoption. Only the child, the adoption agency or a person named in the order may apply to the court for the order to be varied or revoked.

There may be cases where it is inappropriate for contact to take place even though provided for under an order. *Subsection (2)* enables the adoption agency to refuse contact for a period of not more than 7 days if it is satisfied that it is appropriate to do so in order to safeguard the child's welfare. Regulations may set out the steps to be taken by an adoption agency which has exercised its power under *subsection (2)*, the circumstances in which the terms of any order made under clause 23 may be departed from, and the notification by an adoption agency of any variation or suspension of arrangements made with a view to allowing any person contact with the child (*subsection (3)*).

Subsection (4) imposes a duty on the court when making a placement order to consider the arrangements the agency has made or proposes to make in relation to contact and under *subsection (5)* the court may impose any conditions on a contact order made under clause 23 as it thinks appropriate.

Clauses 25: Further consequences of placement

Clauses 25 makes further provision as to the consequences of placement. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under clause 16 (placement with consent), a parent or guardian cannot apply for a residence order

unless an application for a final adoption order has been made and the parent or guardian has obtained the leave of the court under clause 44(3) or (5) to oppose the making of the adoption order (*subsection (1)(a)*). This is to allow competing applications for residence orders from parents at contested final adoption order hearings. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under clause 16 and an application has been made for an adoption order, a guardian of the child may not apply for a special guardianship order unless he has obtained the leave of the court under clause 44(3) or (5) (*subsection (1)(b)*).

Subsections (2) to (4) provide that where an adoption agency is authorised to place a child for adoption (whether or not the child is placed) a person cannot remove him from the United Kingdom (whether or not the child is in Northern Ireland (*subsection (10)*)) except with the leave of the court or if each parent or guardian gives written consent. However this would not prevent the removal of the child from the United Kingdom for up to a month by a person who provides the child's home.

Subsection (5) provides that a child may be not be known by a new surname, without the leave of the court, or each parent or guardian or the adoption agency giving written consent. If the adoption agency intends to give its authorisation, it can only do so if it has given at least 14 days' notice to every person with parental responsibility for the child, or the child himself if the agency feels he has sufficient understanding (*subsection (6)*). *Subsection (5)* is subject to any direction of the court (*subsection (7)*). The court may vary or revoke such a direction at any time on the application of any person having parental responsibility for the child; the adoption agency; or the child, if the court feels that he has sufficient understanding (*subsection (8)(a)*). The court may also make, vary or revoke such a direction in any family proceedings in which a question arises in relation to the welfare of the child and the court considers that the direction should be given even though no such application has been made (*subsection (8)(b)*). *Subsection (9)* provides that "family proceedings" has the same meaning as in the Children Order.

Clause 26: Further consequences of placement orders

Clause 26 makes further provision in relation to placement orders. Where a placement order is made in respect of a child and either the child is subject to a care order or the court makes a care order in the same proceedings, the care order ceases to have effect during the period when the placement order is in force (*subsection (1)*). On the making of a placement order, any order mentioned in Article 8(1) of the Children Order (for example, a residence order) and any supervision order ceases to have effect (*subsection (2)*). Furthermore, where a placement order

is in force, a prohibited steps order, specific issue order, residence order, supervision order or child assessment order cannot be made in respect of the child (*subsection (3)*).

Subsection (4) provides that, where a placement order is in force and an application for a final adoption order has been made, a parent or guardian may make a competing application for a residence order providing they have the leave of the court to oppose the making of the final adoption order under clause 44(3) or (5). Once an application for a final adoption order has been made, anyone else who is entitled to do so may make a competing application for a residence order, with the leave of the court.

Subsection (5) provides that, where a placement order is in force, no special guardianship order may be made in respect of the child. However, once an application for a final adoption order has been made in respect of the child, a person entitled to do so may make a competing application for a special guardianship order with the leave of the court.

Removal provisions

Clauses 27 to 32 make provision in relation to the removal of children who are or may be placed for adoption by adoption agencies, to ensure that they are only removed from placements by authorised people in the appropriate manner. These clauses apply whether or not the child in question is in Northern Ireland.

Clause 27: General prohibitions on removal

Clause 27 imposes general prohibitions on removal and is subject to clauses 28 to 30. Under *subsection (1)(a)*, where a child is placed with prospective adopters under clause 16, it is an offence for a person other than the adoption agency to remove the child from that placement (subsections (1) and (8)). Under *subsection (1)(b)*, where a child is placed for adoption and either the child is less than 6 weeks old or the agency has not been authorised to place the child for adoption, the same offence applies. This ensures that where a child is placed with the mother's consent while under 6 weeks of age, but the agency is later unable to secure the mother's consent under clause 16, the restrictions on removal would continue to apply to the placement. Subsection (1) applies even if the parent has withdrawn his consent to placement.

If a child is accommodated by an authority and it has applied for a placement order and the application has not been disposed of, the child may not be removed from the accommodation pending the determination of that application without the leave of the court (clause 27(2) and (8)). Where an adoption agency is authorised to place a child for adoption but the child is not

yet placed and is being provided with accommodation by an agency in, for example, a foster placement or a children's home, it is an offence for a person other than the agency to remove the child from that accommodation (clause 27(3) and (8)). *Subsection (3)* applies if the parent or guardian has withdrawn consent to placement.

The general prohibitions on removal set out in this section are subject to the specific provisions made in clauses 28 to 30 but those sections do not apply if the child is subject to a care order (*subsection (4)*). But the provisions in clauses 27 to 30 covering prohibition on removal do not prevent the removal of a child who is arrested, or removal as a result of the exercise by an authority or other person of a power conferred by any enactment (excluding the right under Article 22(2) of the Children Order of a person who has parental responsibility for a child to remove a child voluntarily accommodated by an authority) (*subsections (6) and (7)*).

Subsection (8) provides that a person who removes a child in breach of subsection (1), (2) or (3) is liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

Clause 28: Recovery by parent etc. where child not placed or is a baby

Clause 28 applies where a child is not yet placed for adoption but is being provided with accommodation by an adoption agency and previous consent to placement under clause 16(1) has been withdrawn, which must be done in writing to the agency on the form prescribed (*subsection (1)*). If a parent or guardian informs the agency that they wish the child to be returned, the agency must return the child to them within 14 days beginning with the date of request, unless an application is, or has been, made for a placement order and the application has not been disposed of (*subsection (2)*).

Where a child is placed for adoption and either the child is less than 6 weeks old or the agency has at no time been authorised to place the child and any parent or guardian informs the agency that they wish the child to be returned (*subsection (3)*), the agency must give notice to the prospective adopters who must return the child to the agency within the period of 7 days beginning with the day on which the notice is given unless an application is, or has been, made for a placement order and the application has not been disposed of (*subsection (4)*). In this circumstance, once the child is returned to the agency, the agency must then return the child to the parent or guardian in question within 7 days from the date of the child's return from the prospective adopters (*subsection (6)*).

Should a prospective adopter fail to comply with this provision they are guilty of an offence and are liable on summary conviction to a term of imprisonment not exceeding three months or a fine not exceeding level 5 on the standard scale, or both (*subsection (5)*).

Clause 29: Recovery by parent etc. where child placed and consent withdrawn

Clause 29 applies where a child is placed for adoption with prospective adopters under clause 16, and the parent has withdrawn consent, unless an application for a placement order is, or has been made and the application is pending (*subsection (1)*).

If the parent informs the agency he wishes the child to be returned to him, the agency must give notice to the prospective adopters that the parent wishes the child to be returned to him and the prospective adopters have to return the child to the agency within 7 days of the notice being given to them (*subsection (2)*). If the prospective adopters do not return the child, they commit an offence and are liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both (*subsection (3)*). The agency must return the child to his parent within 7 days, beginning with the day the child is returned to the agency (*subsection (4)*).

If before notice of removal is given, an application for an adoption order in Northern Ireland (or in Great Britain) or for a residence order or special guardianship order, or for leave to apply for these orders in respect of the child has been made and that application has not been disposed of, the prospective adopters do not have to return the child unless the court makes an order to that effect (*subsection (5)*).

Clause 30: Recovery by parent etc. where child placed and placement order refused

Clause 30 applies where a child is placed for adoption under clause 16, the adoption authority's application for a placement order has been refused and the parent wishes the child to be returned to him (*subsection (1)*). The prospective adopters must return the child to the adoption authority on the date set by the court (*subsection (2)*). Should the prospective adopters fail to do this, they commit an offence and are liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both (*subsection (3)*). The adoption authority must return the child to his parent or guardian within 7 days beginning with the day on which the child is returned to it (*subsection (4)*).

Clause 31: Placement orders: prohibition on removal

Clause 31 applies where a placement order is in force or has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by an adoption authority (*subsection (1)*). It is an offence, punishable as set out in *subsection (5)*, for a person (other than the adoption authority) to remove the child from the prospective adopters or accommodation provided by the authority.

Where a placement order has been revoked, it will be for the court, when they revoke the order, to determine whether the child is to remain with the prospective adopters or be returned to the adoption authority or parent or guardian. If the court determines the child should not remain with the former prospective adopters, they must return the child to the adoption authority within a period determined by the court, otherwise they commit an offence (*subsection (3)*). If the court determines that the child should return to the parent or guardian, the adoption authority must secure the child's return to the parent or guardian within 7 days from the day the child is returned to the authority, or where the child is in accommodation provided by an authority, within 7 days from the day on which the revocation of the placement order comes into force (*subsection (4)*). This clause does not prevent the removal of a child who is arrested (*subsection (7)*) and *subsection (8)* provides that clause 31 applies whether or not the child in question is in Northern Ireland.

Clause 32: Return of child in other cases

Clause 32 applies in cases where the prospective adopters want to return the child or the adoption agency has decided that the child should not remain with the prospective adopters. In the first case, the prospective adopters must give notice to the agency that they want to return the child and the agency has to collect the child (*subsection (1)*). The agency must also notify the child's parent or guardian so he may consider his position. The provision requires that the agency must receive the child from the prospective adopters before the end of a period of seven days beginning with the giving of notice. In the second case, the agency must give notice to the prospective adopters that it does not want the child to remain with them and the prospective adopters must return the child within 7 days of the giving of notice (*subsection (2)*). Again, the agency must inform the child's parent or guardian (*subsection (3)*). If the prospective adopters fail to return the child within 7 days of the giving of notice, they commit an offence and are liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding level 5 of the standard scale, or both (*subsection (4)*).

If a notice of removal is given under subsection (2), an application was made for an adoption order, residence order or special guardianship order, or for leave to apply for these orders in

respect of the child, and that application has not been disposed of, the prospective adopters do not have to return the child unless the court makes an order to that effect (*subsection (5)*).

This section applies whether or not the child in question is in Northern Ireland (*subsection (6)*).

In subsection (5)(b) “adoption order” means an adoption order made under the law of any part of the United Kingdom (*subsection (7)*).

Clauses 33 to 37: Removal of children in non-agency cases

These clauses cover restrictions on the removal of the child in non-agency cases, i.e. where the child has not been placed for adoption by an adoption agency. These include adoptions by the partner of a parent, cases where authority foster parents wish to adopt a child placed with them, and adoptions by relatives and private foster parents.

Clause 33: Restrictions on removal

Clause 33 provides that where an application for an adoption order has been made, notice of intention to apply to adopt has been given (as required under clause 41), or the court's leave sought to make an application (under section 39(6)), a child may only be removed in accordance with the provisions detailed in clauses 33 to 37 (*subsection (1)*). None of the restrictions prevent removal in the case of the child being arrested (*subsection (4)*).

Where leave to apply to adopt has been granted, the restrictions on removal extend for 3 days to allow notice of intention to be given (*subsection (3)*). In the case of notice of intention to adopt, the restrictions on removal apply for 4 months (under clause 41 there must be a minimum of 3 months between the giving of notice and an application to adopt), but a second notice given within 5 months of the first notice will not trigger protection (*subsection (2)*). This is to prevent the giving of repeated notices of intention to adopt as a means of preventing removal of the child.

Where a parent or guardian may remove his child in accordance with clause 33, the persons with whom the child has his home must return the child to the parent or guardian at once (*subsection (5)*). A person who fails to comply with this provision or removes a child in breach of clause 33 is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both (*subsection (6)*).

This group of sections applies whether or not the child in question is in Northern Ireland (*subsection (7)*) and references to a child placed by an adoption agency includes a child placed by an adoption agency in England, Wales and Scotland.

Clause 34: Applications for adoption

Clause 34 provides that where an application for an adoption order has been made and the application has not been disposed of, the child may only be removed by a person who has the leave of the court, or by an adoption authority or other person in exercise of a power conferred by any statutory provision (for example, for child protection purposes under the Children Order). Once an application for an adoption order has been made in respect of a child voluntarily accommodated under Article 21 of the Children Order, the provision in Article 22(2) of that Order allowing any person who has parental responsibility to remove the child at any time does not apply.

Clause 35: Authority foster parents

Where an authority foster parent has given notice of intention to adopt, which they may do once the child has lived with them for one year, then the child may only be removed with the leave of the court, by an adoption authority or other person in exercise of a power conferred by any statutory provision or, if the child is voluntarily accommodated under Article 21 of the Children Order, by a person who has parental responsibility for the child (*subsection (5)*). However, where the child has been with the authority foster parent for 5 years or more or an application for leave to make an application to adopt has been made but not disposed of, the right of a person with parental responsibility for the child under Article 22(2) of the Children Order to remove a child does not apply (*subsections (2) and (3)*).

Clause 36: Partners of parents

Where a partner of a parent has given notice of intention to apply to adopt, the child may only be removed with the leave of the court or by an adoption authority or person in exercise of the power conferred by any statutory provision (other than Article 22(2) of the Children Order), or by a parent or guardian of the child (unless the child has lived with the partner of the parent for 3 out of the last 5 years, in which case a parent may not remove the child). A definition of “partner of a child’s parent” is given in clause 158(6).

Clause 37: Other non-agency cases

In these cases, where notice of intention to adopt has been given or leave has been applied for under clause 39(6) and the application has not been disposed of, the child may only be removed with the leave of the court or by an adoption authority or other person acting in exercise of a power conferred by any statutory provision other than Article 22(2) of the Children Order.

Clause 38: Recovery orders

Clause 38 makes provision for what is to happen where a child is removed, or there are reasonable grounds for believing that a person intends to remove a child, or a child is withheld and not returned, in breach of any of the preceding provisions of Chapter 3 (that is, clauses 15 to 37). It also applies where a person has failed to comply with clauses 28(4), 29(2), 30(2), 31(3) or 32(2).

In those circumstances an application may be made to the court and the court may by order –

- direct any person who is in a position to do so to produce the child,
- authorise the removal of the child by an authorised person,
- require anyone who has information as to the child's whereabouts to disclose that information to a constable or officer of the court, or
- authorise a constable to enter any premises specified in the order (if there are reasonable grounds for believing the child is there) and search for the child, using reasonable force if necessary.

Authorised persons are any person named by the court, any constable, or any person who is authorised to exercise any power under the order by an adoption agency which is authorised to place the child for adoption (*subsections (2) to (4)*).

If a person intentionally obstructs an authorised person exercising the power of removal he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (*subsection (5)*).

A person who is required to disclose information must disclose that information even though it might amount to evidence that he had committed an offence (*subsection (6)*). However, in any criminal proceedings in which the person is charged with an offence (except one which is excluded in *subsection (8)*, that is, offences under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979) the prosecution cannot adduce evidence relating to the information

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provided or ask questions about it, unless it is raised by or on behalf of that person (*subsection (7)*).

Clause 39: Child to live with adopters before application

Clause 39 sets out the period a child must live with the applicants before they can apply for an adoption order. Where the child is placed for adoption by an adoption agency (or pursuant to an order of the High Court, or being adopted by his natural parent) an application for an adoption order may not be made unless the child has had his home with one or both of the applicants at all times in the 10 weeks before the application is made (*subsection (2)*).

For adoptions by a partner of a parent, the child is required to have had his home with the applicant or applicants at all times during the period of one year preceding the application (*subsection (3)*). The period is also one year in the case of non-agency applications by authority foster parents and 3 out of the last 5 years in any other non-agency cases, unless the court gives leave for an earlier application (*subsections (4) to (6)*).

Subsection (7) provides that the court may not make an adoption order unless it is satisfied the adoption agency, including a Great Britain agency, or an adoption authority within whose area the child lives in non-agency cases, has had sufficient opportunities to see the child with the applicants in their home.

Clause 40: Reports where child placed by agency

This clause provides that the adoption agency which places the child for adoption is responsible for submitting to the court a report on the suitability of the applicants and any other matters relevant to the operation of clause 1 and for assisting the court as it may direct. The report should in particular address the matters in the welfare checklist (*subsection (1)*). *Subsection (2)* provides that an adoption agency may make arrangements for such functions to be discharged by another adoption agency.

Clause 41: Notice of intention to adopt

Clause 41 applies where persons wish to adopt a child who is not placed for adoption with them by an adoption agency. Clause 41 provides that an adoption order may not be made in respect of a child in a non-agency case unless the proposed adopters have given notice of intention to adopt to the appropriate adoption authority (*subsection (2)*). The notice must be given not more than two years or less than three months before the application is made for the adoption order (*subsection (3)*). The 'appropriate adoption authority' is defined in *subsection (9)*. Where the

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adoption authority receives a notice of intention to adopt they must investigate (or make arrangements for this to be done by another adoption agency) and are responsible for preparing a report for the court which includes the suitability of the proposed adopters and any other matters relevant to the operation of clause 1 (*subsections (5) and (6)*). Where a person needs leave to apply for an adoption order under clause 39(4) and (5) he cannot give notice of intention to adopt unless he has the court's leave to make the adoption application (*subsection (4)*).

If an adoption authority receives notice of intention to adopt a child whom it knows was, at any time before the notice was given, looked after by another adoption authority it must, within 7 days of receipt of the notice, inform the other adoption authority in writing that it has received the notice (*subsection (7)*).

Subsection (8) provides that where an adoption authority has placed a child with any persons otherwise than as prospective adopters and those persons give notice of intention to adopt, the adoption authority is not to be treated as keeping the child with them as prospective adopters for the purposes of clause 15(1)(b).

Clauses 42: Suitability of adopters

Clause 42 amplifies the power in clause 9 in relation to determining the suitability of prospective adopters.

Clause 42: Regulations as to matters to be taken into account

Subsection (1) enables the Department to make regulations prescribing the matters to be taken into account by an adoption agency in determining the suitability of any persons to adopt a child, or in making any report in respect of the suitability of such persons. The regulations may in particular make provision for ensuring that adoption agencies, in determining the suitability of a couple to adopt, give proper regard to the need for stability and permanence in their relationship (*subsection (2)*). A definition of “couple” is given in clause 158(3).

Clause 43: Adoption orders

Clause 43 explains the effect of an adoption order. An adoption order made by the court on an application under clause 47 or 48 gives parental responsibility for a child to the adopters or adopter. It extinguishes the birth parent's parental responsibility, any order under the Children Order (which includes residence orders), any order under the Children Act 1989 or the Children (Scotland) Act 1995 (other than an excepted order) and any duty in an agreement or an order

of a court to make maintenance payments (*subsection (2)*). The two types of orders under the Children (Scotland) Act 1995 which would remain in force once an adoption order has been made are orders concerning property and exclusion orders which bar a parent from the family home because of the risk he or she poses to the child. Once an adoption order is made, any liabilities of the birth parent under the Child Support (Northern Ireland) Order 1991 will cease to have effect. A parent for the purposes of that Order is defined as any person who is in law the mother or father of the child (see Article 2 of that Order). Once a child is adopted, the birth parent ceases to be the parent of the child and the adoptive parents become the parents of the child for the purposes of that Order. Therefore, on adoption, any existing maintenance assessment will cease to have effect and a court order (if any) for the child's maintenance will cease by virtue of clause 43(2)(e). However subsection (2)(e) does not apply to a duty arising by virtue of an agreement which constitutes a trust, or expressly provides that the duty is not to be extinguished by the making of an adoption order (*subsection (4)*).

An adoption by a partner of a parent of the adopted child does not affect the parental responsibility of the parent of the adopted child or any duties of that parent (*subsection (3)*). *Subsection (5)* provides that an adoption order may be made even if the child to be adopted is already an adopted child.

Subsection (6) provides that before making an adoption order the court must consider whether there should be arrangements for allowing any person contact with the child. In this respect it may consider any existing or proposed arrangements, and obtain any views of the parties to the proceedings.

Clause 44: Conditions for making adoption orders

Clause 44 sets out the conditions which must be satisfied before an adoption order can be made where a child has a parent or guardian. One of three conditions must be satisfied. The first condition is that the court is satisfied that each parent or guardian consents to the making of the adoption order or has given advance consent to the making of the adoption order under clause 17 (and has not withdrawn that consent) and does not oppose the making of an adoption order or that the parent's or guardian's consent should be dispensed with (*subsection (2)*). Where the parent has given advance consent to the adoption under clause 17, he may only oppose the making of the adoption order with the leave of the court (*subsection (3)*). This provision includes a parent or guardian who has consented under clause 17 (advanced consent to adoption) or section 20 of the Adoption and Children Act 2002 or section 31(2) of the Adoption and Children (Scotland) Act 2007 regarding consent.

The second condition is that the child has been placed for adoption by an adoption agency with the prospective adopters who are applying for the order and either the child was placed for adoption with the consent of each parent or guardian and the consent of the mother was given when the child was at least 6 weeks old or under a placement order and no parent or guardian opposes the making of the adoption order (*subsection (4)*). A parent may not oppose the making of the adoption order under the second condition without the leave of the court (*subsection (5)*).

The third condition is that an adoption agency is authorised to place the child for adoption by virtue of section 19 of the Adoption and Children Act 2002, or is subject to a placement order under section 21 of that Act, or the child is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted (*subsection (6)*).

Subsection (7) provides that the court cannot give leave under subsection (3) or (5) for a parent or guardian to oppose the making of the adoption order unless it is satisfied that there has been a change in circumstances since the consent was given or the placement order was made. For example, in a case where a placement order was made on the grounds of the child's welfare because of parental drug or alcohol abuse, such a change in circumstances might include proven, sustained and successful rehabilitation. Where a mother consented to placement before her baby was 6 weeks old, and did not subsequently confirm that consent, she does not need the leave of the court to oppose the adoption order.

An adoption order may not be made in relation to a person who is, or has been, married or a civil partner, or who has attained the age of 19 (*subsection (8)*).

Clause 45: Restrictions on making adoption orders

Clause 45 provides that a court may not hear an application for an adoption order in relation to a child, where a previous application, including an application for an English, Scottish or Welsh adoption order, or for an order for adoption made in the Isle of Man or any of the Channel Islands, made by the same persons in relation to the same child, was refused by any court, unless, in refusing the previous application, the court directed that this paragraph should not apply, or it appears to the court that there is a change of circumstances or other reason which justifies the second application.

Clause 46: Applications for adoption

Clause 46 provides that an application for an adoption order may be made by a couple or one person but only if it is made under clause 47 or 48 and one of the following conditions is

satisfied. The first condition is that at least one of the couple or the applicant is domiciled in a part of the United Kingdom, any of the Channel Islands or the Isle of Man (*subsection (2)*). The second condition is that both of the couple have, or the applicant has, been habitually resident in a part of the United Kingdom, any of the Channel Islands or the Isle of Man for at least one year ending with the date of the application (*subsection (3)*). The term “couple” is defined in clause 158(3). An application for an adoption order may only be made if the person to be adopted has not reached age 18 by the date of the application (*subsection (4)*). *Subsection (5)* provides that references in this Bill to a ‘child’, in connection with any proceedings (whether or not concluded) for adoption (such as “child to be adopted” or “adopted child”) include a person who has attained the age of 18 years before the proceedings are concluded.

Clause 47: Adoption by couple

Under clause 47 an application for an adoption order by a couple may only be made where both of them have reached the age of 21. However, where one of them is the mother or father of a child to be adopted, an application may be made if that person is 18 or over and the other person is 21 or over.

Clause 48: Adoption by one person

Subsection (1) provides that an application may be made by one person who is 21 and is not married or a civil partner. In certain circumstances, an adoption application may be made by one person who is a partner of another person. A partner of a natural parent may adopt the child of that natural parent (*subsection (2)*). “Partner” is defined in clause 158(6). An adoption order may be made on the application of one person who is 21 or over and is either married or a civil partner, if the court is satisfied that the person’s spouse/civil partner cannot be found; the spouses/civil partners have separated and are living apart, and the separation is likely to be permanent; or the person’s spouse/civil partner is incapable of making an application for an adoption order because of (physical or mental) ill-health (*subsections (3) and (4)*).

An adoption order may also not be made on the application under this clause by the mother or father of the person to be adopted unless the court is satisfied that: the other natural parent is dead or cannot be found; or by virtue of the provisions set out in *subsection (6)* in relation to section 28 of the Human Fertilisation and Embryology Act 1990 or sections 34 to 47 of the Human Fertilisation and Embryology Act 2008; or there is some other reason justifying the child’s being adopted by the applicant alone (*subsection (5)*). Under this subsection, where the court makes an adoption order, the court must record that it is satisfied with the facts, or record the reason justifying the child’s being adopted by the applicant alone.

Clause 49: Post-adoption contact

Clause 49 provides for the making of orders which deal with contact arrangements at the adoption order stage and subsequently between an adopted child and those persons listed in *subsection (3)*. It provides that orders under this clause can only be made where an adoption agency has placed or was authorised to place a child for adoption and the court is making, or has made an adoption order (*subsection (1)*).

When making the adoption order or at any time afterwards the court may either make an order requiring the person in whose favour the adoption order is or has been made to allow the child to visit or stay with the person named in the order made under *subsection (2)(a)*, or for the person named in that order and the child otherwise to have contact with each other or an order prohibiting the person named in the order from having contact with the child (*subsection (2)(b)*). The court may also, when making an adoption order, make an order under *subsection (2)(b)* prohibiting contact on its own initiative (*subsection (6)*).

Subsection (3) lists the persons that may be named in an order under clause 49. These include former relatives and guardians of the child, any person who had parental responsibility for the child immediately before the making of the adoption order, any person entitled to make an application for a clause 23 order (contact during placement), as well as any person who has lived with the child for at least one year. *Subsection (7)* provides that the one year period need not have been continuous but must not have started more than five years before the making of the application.

Subsection (4) provides that the child, the person who has applied for the adoption order or the child's adoptive parents may make an application for a post adoption contact order under clause 49 without the permission of the court. Any other person may apply for an order if they have obtained the permission of the court to do so (*subsection 4(c)*).

Subsection (5) sets out the matters that the court must consider when deciding whether to grant permission, under *subsection (4)(c)*, to apply for an order. It provides that the court must consider the possible harm that might be caused to the child by the proposed application, the applicant's connection to the child, and any representations that are made to the court by the child, or the person who has applied for the adoption order or the child's adoptive parents.

Subsection (8) provides that where clause 49 applies, an order under Article 8 of the Children Order may not provide for contact between the child and any person who may be named in a clause 49 order.

Clause 50: Orders under clause 49: supplementary

An order under clause 49 may contain directions on how it will be carried into effect, be made subject to appropriate conditions, be varied or revoked following an application by the child, the adoptive parents or the person named in the order under clause 49 and has effect until the child's 18th birthday, or any earlier date specified by the court, unless revoked (*subsection (1)*).

Subsection (2) provides that *subsection (3)* applies to proceedings; on an application for an adoption order in which an application for a clause 49 order is made, or the court indicates that it is considering making such an order on its own initiative; an application for a clause 49 order; on an application for this order to be varied or revoked. *Subsection (3)* provides that the court must, (in the light of any rules made by virtue of *subsection (4)*), draw up a timetable in relation to orders under clause 49 and give directions for ensuring, so far as is reasonably practicable, that any timetable is adhered to.

Subsection (4) sets out that rules of court may specify periods within which specified steps must be taken in relation to proceedings to which *subsection (3)* applies and make other provision with respect to such proceedings for the purpose of ensuring that, as far as reasonably practicable, the court makes determinations about clause 49 orders without delay.

Clause 51: Parental etc. consent

Clause 51 applies generally to placement and adoption and covers the giving and withdrawal of consent to placement for adoption or to adoption, including advance consent to adoption (*subsection (2)*).

Dispensing with a parent or guardian's consent is relevant in relation to the making of placement orders and adoption orders. *Subsection (1)* provides that the court cannot dispense with the consent of any parent or guardian to a child being placed for adoption or to the making of an adoption order in respect of the child unless it is satisfied that the parent or guardian cannot be found or is incapable of giving consent or that the welfare of the child requires parental consent to be dispensed with. Clause 1 applies to a decision about whether or not to dispense with the consent of a parent or guardian to a placement order or an adoption order. The child's interests are the paramount consideration and the welfare checklist in clause 1(4) recognises the importance of the child's relationship with his parents and their ability and willingness to provide him with a secure home and otherwise to meet his needs.

Any consent given by the mother of a child to the making of an adoption order is ineffective if it is given less than 6 weeks after the child's birth (*subsection (3)*).

Subsection (4) provides that once an application for an adoption order has been made, any consent that has been given to placement for adoption or consent to final adoption may not be withdrawn. If the parent wishes to oppose the adoption order in these circumstances they must seek the court's leave under clause 44(3) or (5).

Subsection (5) defines what is meant by "consent". Consent means consent which is given unconditionally and with full understanding of what is involved. A person may give consent to adoption without knowing the identity of the person(s) in whose favour the adoption order will be made. Court rules are to prescribe the form in which consent to placement for adoption under clause 16 and advance consent to adoption under clause 17 must be given. Rules may also prescribe a form of consent that may be used in other circumstances (*subsection (7)*). Withdrawal of those consents must be in the prescribed form or by notice in writing given to the adoption agency (*subsection (8)*).

Subsections (9) and (10) deal with the situation where an unmarried mother gives consent to placement under clause 16 and subsequently the child's father acquires parental responsibility for the child, either by marriage or a parental responsibility agreement or order under the Children Order. Under subsection (10), the father who later acquires parental responsibility is deemed to have consented on the same basis as the mother. Without this, authority for the placement would lapse immediately the father acquired parental responsibility. Following his acquisition of parental responsibility, and regardless of subsection (10), the father would be able to withdraw consent in the case of a placement for adoption, which is the same position the mother is in. Where the mother has given advance consent to adoption, the father would be given notice of the application for an adoption order and would be able to oppose, with the leave of the court, the making of the order.

Clause 52: Modification of Children Order in relation to adoption

Under the Children Order, a child who is authorised to be placed for adoption by an adoption authority is looked after by the authority, whether or not he is actually placed for adoption. The intention in extending the 'looked after' status to children where there is authorisation to place for adoption is to ensure that it is clear that the authority is to have a continuing responsibility for managing and overseeing the child's future, and regularly reviewing their progress, until an adoption order is made. This also applies to a child who has been placed for adoption by an adoption authority and is less than 6 weeks old.

However, in order to reflect the particular circumstances of placement for adoption, certain provisions in the Children Order will need to be modified or disapplied where an adoption authority is authorised to place a child for adoption, whether or not the child is placed. *Subsection (1)* provides that such modification or disapplication may be made by way of regulations. The provisions are Article 26(2)(b), (c) and (d) and (3)(b) of the Children Order (duty to ascertain wishes and feelings of certain persons) and Articles 29 and 39 (promoting contact with parents and parents' obligation to contribute towards maintenance) (*subsection (2)*).

Subsection (3) makes similar provision to modify or disapply specified provisions of the Children Order where an appropriate voluntary organisation (see clause 2(3) for the definition of "appropriate voluntary organisation" – means a voluntary organisation which is an adoption society in respect of which a person is registered) is authorised to place a child for adoption or has placed a child for adoption who is less than 6 weeks old.

Subsection (4) provides that where a child's home is with persons who have given notice of intention to adopt, no contribution is payable under Articles 38 to 43 of the Children Order (contributions towards maintenance of children looked after by an authority) in respect of the period referred to in *subsection (5)*. *Subsection (5)* sets out when the period begins and ends. *Subsection (6)* defines that the "notice of intention to adopt" includes any notice of intention to apply for an adoption order under the law of any part of the United Kingdom.

Clause 53: Disclosing information to prospective adopters

Clause 53 provides that the general regulation making power under clause 9 may be used to require adoption agencies in prescribed circumstances to provide prescribed information to prospective adopters. The intention is to require adoption agencies to provide prospective adopters with the necessary information about a child (for example his needs, his interests, how he relates to other children and adults and his education and health) to help them decide whether to accept a match that the adoption agency suggests with a child.

Clause 54: Revocation of adoptions on legitimation

Clause 54 provides that, where a child is adopted by one natural parent as the sole adoptive parent, the adoption order may, in circumstances where a child is legitimised by the subsequent marriage of, or formation of a civil partnership by, his natural parents to each other, on application, be revoked by the court in which the adoption order was made. In *subsection (2)*

the reference to the court in which the adoption order was made includes a reference to any other county court.

Clauses 55 to 64: Disclosure of information about a person's adoption

Clauses 55 to 64 introduce new provisions on the information that adoption agencies must keep in relation to a person's adoption, the form it must take and the manner in which it should be kept, also the information that adoption agencies must disclose to adopted adults on request, the information that courts must release to adopted adults on request and the information that adoption agencies may release to adopted adults, birth parents and others. The information kept will be about the adopted person, his birth parents and siblings, his adoptive parents and siblings, other relatives, and social workers' reports, including health reports. Many of the provisions on the disclosure of information provide powers for the making of regulations to enable the necessary detail to be set out in secondary legislation.

These provisions cover the two types of information held under clause 55 - protected information (see clause 56) and information which is not protected (see clause 57).

The Bill establishes a new system for access to protected information about adopted persons and others involved in their adoption. Currently information about an adopted person is held by three sources: the adopted person's adoption agency, which would normally hold case details and other information; the Registrar General, who holds birth records and basic information about the adopted person's adoption, such as his adoptive name and the names of his adoptive parents; and the court, which will hold reports submitted to it and records of the adoption proceedings. Under these provisions, whilst the Registrar General will retain his duty to maintain the Adopted Children Register and the Adoption Contact Register, the adoption agency will be the main "gateway" for access to this information.

Under the new system, the adopted adult will have a right to certain information under clause 59. A person may apply to the appropriate adoption agency (appropriate adoption agency is defined in clause 64) for protected information about a person involved in an adoption, such as the adopted person, his birth parents or the adoption social worker. If the protected information is about an adult, clause 60 will apply. If the protected information is about a child or it is not possible to disclose protected information about an adult without also disclosing protected information about a child, clause 61 will apply. Regulations may be made to provide for determinations made by adoption agencies under these provisions to be reviewed by an independent panel constituted under clause 12.

These clauses will only apply to adoptions that take place after the Bill has been implemented. The arrangements for access to information for those adopted prior to the date of coming into operation of clauses 55 to 64 will be provided for by clause 102.

Clause 55: Information to be kept about a person's adoption

Clause 55 provides a power to make regulations to prescribe the information that an adoption agency must keep in relation to a person's adoption, the form it should take and the way it should be kept. The information kept will be about the adopted person, his birth parents and siblings, his adoptive parents and siblings, other relatives, and social workers' reports. *Subsection (3)* provides a power to make regulations for the transfer of information between adoption agencies, for example where the original adoption agency is ceasing to operate.

Clause 56: Restrictions on disclosure of protected etc. information

Clause 56 makes provision for protected information. Protected information is defined in *subsection (3)*. It is any identifying information (defined in *subsection (4)*) sought by someone other than the person it is about, and any information held under *subsection (2)*. Under *subsections (1) and (2)* protected information must only be disclosed in accordance with clauses 55 to 64.

Identifying information would include names, residential, educational and employment addresses, photographic or audio-visual material, case records and legal and medical information held by adoption agencies. The information held under *subsection (2)* is any information held by an adoption agency, which it has obtained from the Registrar General under clause 78(5) or any other information that would enable an adopted person to obtain a certified copy of his birth record or any information about an entry in the Adoption Contact Register about the adopted person.

Subsection (5) provides that the disclosure of protected information where an agreement is reached that includes the adoption agency is not prevented by anything in this group of sections. This is intended to allow agreement between the adoption agency, the adoptive parents and the birth parents for the sharing of protected information. *Subsection (6)* provides a power to make regulations which may authorise or require an adoption agency to disclose protected information to someone other than the adopted person.

Clause 57: Disclosure of other information

Clause 57 provides for the disclosure of information held under clause 55 which is not defined as protected information. *Subsection (2)* enables an agency to disclose this information to any person for the purposes of its functions. This could, for example, be background information about the child's progress to be disclosed to his birth family, without disclosing his new identity or his whereabouts. *Subsection (3)* provides that an adoption agency must disclose prescribed information to a prescribed person in prescribed circumstances.

Clause 58: Offence

Clause 58 enables regulations to provide that an appropriate voluntary organisation which discloses information in contravention of clause 56 is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Clause 59: Disclosing information to adopted adult

Clause 59 makes provision for the disclosure of information held by adoption agencies and courts to adopted adults. It gives the adopted adult the right under *subsection (2)(a)* to receive any information held by the adoption agency necessary to enable him to obtain a certified copy of his birth record, unless the High Court orders otherwise. Under *subsection (3)*, the High Court may make an order on application from the adoption agency to withhold this information if it believes that the circumstances are exceptional. An example of when the High Court may exercise this power is where it is considered that disclosure would lead to a serious crime being committed. *Subsection (2)(b)* allows the adopted adult to receive prescribed information his adoptive parents received under clause 53. Under *subsection (4)* the adopted person has the right to request from the court a copy of a prescribed document or prescribed order relating to his adoption. *Subsection (6)* provides that "prescribed document or order" means prescribed by rules of court. Under *subsection (5)* the documents which the adopted person may request from the court will not contain protected information.

Clause 60: Disclosing protected information about adults

Clause 60 provides for the process that an adoption agency must undertake when an application is made for the disclosure of protected information about an adult. *Subsection (1)* provides that this process applies where any person applies to the appropriate adoption agency for protected information and none of that protected information is about a person who is a child at the time that the application is made.

Subsection (2) provides that the agency is not obliged to process an application for disclosure of information unless it considers that it is appropriate to do so. Where an agency does consider that it is appropriate to proceed with the application, *subsection (3)* obliges it to take all reasonable steps to obtain the views of the person the information is about as to the disclosure of that information.

Subsection (4) gives the agency discretion to proceed with the application to disclose the information if it considers it appropriate to do so. *Subsection (5)* provides that in making a decision as to whether or not it is appropriate to proceed with the application or to disclose the information, the agency must consider the welfare of the adopted person, any views that it has obtained under subsection (3), any matters that may be prescribed in regulations and all the other circumstances of the case.

Under *subsection (6)*, this section does not apply to a request for information under clause 59(2), where a request is made by an adopted adult for either the information needed to obtain a certified copy of his birth record or the information given by an agency to his adopters under clause 53. Applications by an adopted person for the disclosure of all other protected information fall within this clause or clause 61. Clause 60 does not apply to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of clause 56(6).

Clause 61: Disclosing protected information about children

Clause 61 provides for the process that an appropriate adoption agency must undertake when an application for disclosure of protected information is made to it, and any of that information is about a person who is a child at the time that the application is made. This is set out in *subsection (1)*.

Subsection (2) provides that the agency is not obliged to proceed with an application for disclosure of information unless it considers that it is appropriate to do so. If the agency does proceed with the application, *subsection (3)* provides that where the information relates to a child, the agency must take all reasonable steps to obtain the views of any parent or guardian of the child as to the disclosure of the information. If the agency considers it appropriate to do so, it must also seek the child's views as to the disclosure of the information. In doing so the agency must take into account the child's age and understanding, including the ability to understand the consequences of what is being asked, and all the other facts of the case.

Where the agency decides to proceed with the application, *subsection (4)* provides that where the information relates to a person who has attained the age of 18 at the time that the application is made, the agency must take all reasonable steps to obtain his views as to the disclosure of the information.

Subsection (5) gives the agency discretion to disclose the information if it considers it appropriate to do so. This discretion must be exercised having regard to *subsections (6) and (7)*.

Subsection (6) provides that in deciding whether or not to proceed with an application for the disclosure of information, or to disclose that information, where any of the information relates to a person who at the time the application is made is an adopted child, that child's welfare must be the paramount consideration. In the case of any other child, the agency must have particular regard to his welfare.

Subsection (7) provides that in deciding whether or not to proceed with an application to disclose information, or to disclose any information, the agency must consider the welfare of the adopted person (where they are not an adopted child), any views obtained under *subsections (3) and (4)*, any prescribed matters and all the other circumstances of the case.

Under *subsection (8)* this clause does not apply to a request for information under clause 59(2), where a request is made by an adopted adult for either the information needed to obtain a certified copy of his birth record or the information given by an agency to his adopters under clause 53. Applications by an adopted person for the disclosure of all other protected information fall within this section or clause 60. Clause 61 does not apply to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of clause 56(6).

Clause 62: Counselling

Clause 62 makes provision in respect of counselling for those seeking information under these sections, those considering consenting to or objecting to the disclosure of information, and those considering an agreement for the sharing of protected information under clause 56(5). *Subsection (1)* provides a power to make regulations to require adoption agencies to provide information about access to counselling services and *subsection (2)* provides for regulations to require adoption agencies to make arrangements to secure the provision of counselling to those seeking information in prescribed circumstances. The intention is to make counselling available to an adopted person, if he wishes to access it, where he applies to the agency for the

disclosure of protected information about another person. *Subsection (3)* provides a power to make regulations to enable adoption agencies to disclose the information that is needed by the counselling agency for the purposes of providing the counselling. Where the counselling is to be provided outside the United Kingdom, the adoption agency may require the person who is to receive the counselling to pay a prescribed fee. The regulations may require an adoption authority or an appropriate voluntary organisation to provide counselling for the purposes of arrangements under subsection (2) (*subsection (4)*).

Clause 63: Other provision to be made by regulations

Clause 63 provides for regulation making powers which will provide for the balancing of the rights of individuals, and the operation of the new duties for adoption agencies and the Registrar General under clauses 55 to 64. *Subsection (1)* provides a power to make regulations concerning the operation by adoption agencies of their functions under clauses 55 to 64, and the manner in which information may be received by adoption agencies.

Subsection (2) provides a power to make regulations for the recording of agreements made by virtue of clause 56(5) and the information to be provided on an application for the disclosure of information under these provisions.

Subsection (3) provides a power to make regulations requiring adoption agencies to give prescribed persons prescribed information about their rights or opportunities to obtain information or to give their views as to its disclosure. For example, adoption agencies must inform the birth parents and adoptive parents at the time of the placement of the child of the rights of individuals to request protected information.

Under subsection (3)(b), regulations may be made to require adoption agencies to seek prescribed information from, or give prescribed information to, the Registrar General. Adoption agencies will be required to obtain information held on the adopted person's birth record from the Registrar General, if the agency receives a request from the adopted person for that information.

Subsection (4) provides a power to make regulations to require the Registrar General to disclose to any person any information which he needs to help him contact the appropriate adoption agency (defined in clause 64) and to disclose to the appropriate adoption agency information required by that agency about an entry relating to the adopted person on the Adoption Contact Register. This may assist the adoption agency in ascertaining the wishes of an adopted person or of a particular relative in relation to contact with the other party.

This Memorandum refers to the Adoption and Children Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

Subsection (5) provides a power to make regulations for the payment of fees to the adoption agency by anybody who applies to the agency under clauses 59, 60 or 61 for information. The exception is that the adopted person cannot be charged in respect of any information disclosed to him under this group of sections about any person who but for his adoption would be related to him by blood, including half-blood, marriage or civil partnership.

Subsection (6) provides a power to make regulations for the payment of a fee by an adoption agency to the Registrar General for his disclosure of information from the Adoption Contact Register.

Subsection (7) requires the approval of the Department of Finance to the making of regulations under subsections (3) to (6) which relate to the Registrar General.

Clause 64: Sections 55– 64: Interpretation

Clause 64 defines some of the terms used in clauses 55 to 64.

Chapter 4 - Status of Adopted Children

Chapter 4 provides for the status of adopted children, thereby making clear how they are to be treated in law.

Clause 65: Meaning of adoption in Chapter 4

Clause 65 sets out the meaning of "adoption" in Chapter 4. For the purpose of this Chapter, adoption means adoption by adoption orders made in Northern Ireland, England, Wales or Scotland, any of the Channel Islands, the Isle of Man and countries which have implemented the Hague Convention, overseas adoptions or an adoption recognised by the law of Northern Ireland and effected under the law of any other country. References to adoption in this Chapter are to adoptions effected after the date on which Chapter 4 comes into operation. References in other enactments to an adopted person within the meaning of Chapter 4 include a reference to an adopted child within the meaning of Part 5 of the Adoption (Northern Ireland) Order 1987.

Clause 66: Status conferred by adoption

Clause 66 provides for the determination of the legal status of an adopted person. *Subsection (1)* provides that the adopted person is to be treated in law as if born as the child of the adopter or adopters. *Subsection (2)* provides that an adopted person is the legitimate child of the

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adopters or adopter and, if adopted by a couple, or a partner of his parent, he is to be treated as if he had been born as the child of the relationship of that couple.

Subsection (3)(a) provides that in an adoption by the partner of a parent the adopted person is only to be treated in law as the child of the adopter and the partner of the adopter. In any other circumstances *subsection (3)(b)* provides that an adopted person is to be treated only in law as the child of the adopter or adopters (subject to *subsection (4)*). *Subsection (4)* provides that where the adopter is both a sole adopter and the natural parent, *subsection (3)(b)* is to have no effect with respect to anything dependant on the relationship to that parent, for example entitlement to property. A single parent may, for example, adopt his own child so that the child may cease to be illegitimate (although this now happens rarely).

Subsection (5) provides that this clause has effect from the date of an adoption order being made in respect of an individual. *Subsection (6)* confirms that, subject to the other provisions of Chapter 4 and Schedule 4, this clause applies for the interpretation of statutory provisions or instruments passed both before and after a person's adoption and has effect as respects events taking place on or after the adoption. *Subsection (7)* provides that this clause does not apply to a statutory provision or other instrument passed or made before 1st October 1989 in so far as it contains a disposition of property; and does not apply to any public general Act in its application to any disposition of property in a statutory provision or other instrument passed or made before 1st October 1989.

The provisions in this clause are intended only to clarify how an adopted child should be treated in law. They do not touch on the biological or emotional ties of an adopted child, nor are they intended to.

Clause 67: Adoptive relatives

Subsections (1) and (2) enable a relationship that exists as a consequence of clause 66 to be described in law as an adoptive relationship. An adopter may be referred to as an adoptive parent or as an adoptive father or an adoptive mother depending on the circumstances of the case and any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree. However, it does not prevent any term not qualified by the word "adoptive" from being treated as including an adoptive relative.

Subsection (3) provides that where there is a reference to the adoptive mother and father of a child, if the child has been adopted by two persons of the same sex who are a couple, or by a

partner of the child's parent, where the couple are of the same sex, the reference is to be read as a reference to the child's adoptive parents.

Clause 68: Rules of interpretation for instruments concerning property

Clause 68 sets out the rules of interpretation for any instrument concerning the disposition of property. These rules are subject to any contrary indication and to Schedule 4 to the Bill.

Subsection (2) applies where a disposition depends on the date of birth of a child or children of an adoptive parent(s). For the purposes of the disposition, the adopted person is to be treated as having been born on the date of the adoption order. Where two or more people have been adopted on the same date they are to be treated as if they had both been born on that date but in the order of their actual births. *Subsection (3)* gives examples of phrases in wills on which subsection (2) can operate.

Subsection (4) allows an adopted person to retain certain interests vested in him before his adoption. *Subsection (5)* provides that, where it is necessary to determine for the purposes of a disposition of property whether a woman can have a child, it is to be presumed that when she has attained 55 years of age she will not adopt a person after the execution of the instrument and, if she does, that person will not be treated as her child or, if she does so as one of a couple, as the child of the other one of the couple for the purposes of that instrument. *Subsection (7)* provides that clause 68 does not apply to a statutory provision or other instrument passed or made before 1st October 1989.

Clause 69: Dispositions depending on date of birth

Subsection (1) provides that where a child is born illegitimate and adopted by one of his natural parents as the sole adoptive parent, the date of his birth rather than the date of his adoption is taken into account in respect of entitlement to property. *Subsection (2)* sets out an example of when this might apply.

Clause 70: Property devolving with peerages etc.

Clause 70 provides that adoption does not affect the descent of any peerage or dignity or title of honour or the devolution of any property devolving with such titles. Thus, unless there is a contrary intention expressed in the instrument, an adopted person cannot inherit such a title or any associated property from his adoptive parents. Likewise, the natural child of a Peer who is adopted will inherit a peerage, dignity or title of honour and any property devolving with

such titles from his birth parents. *Subsection (3)* provides that exceptions may apply where a contrary intention is expressed in the instrument.

Clause 71: Protection of trustees and personal representatives

Clause 71 provides for the protection of trustees or personal representatives who convey or distribute property in ignorance of the making or revocation of an adoption order.

Clause 72: Meaning of disposition

Clause 72 defines the terms "disposition" and "power of appointment" for the purposes of Chapter 4. *Subsection (3)* confirms that the provisions of this Chapter apply equally to an oral disposition as to a written one. For the purposes of Chapter 4, *subsection (4)* provides that the date of death of the testator is the date a will or codicil is treated as being made and *subsection (5)* provides that the provisions of the law of intestate succession are to be treated as if they are contained in an instrument that the deceased executed (while of full capacity) immediately before his death.

Clause 73: Miscellaneous

Clause 73 provides that the general principle of clause 66 (that an adopted person is to be treated as if he had been born as the child of the adopter or adopters) is not to apply for the purposes of Articles 68 and 69 of the Sexual Offences (Northern Ireland) Order 2008 (sex with an adult relative), marriages or civil partnerships within prohibited degrees of relationship or to incest and, for these purposes, an adopted person remains part of his natural family. The only exception is that an adopted person cannot marry or form a civil partnership with his adoptive parent, as this falls within the prohibited degrees of relationship in Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 or Schedule 12 to the Civil Partnership Act 2004. Otherwise there are no restrictions on marriage or civil partnership within an adoptive family.

Subsection (3) lists other enactments which deal with questions of nationality and immigration, and to which the general principle of clause 66 is also not to apply.

Clause 74: Pensions

Clause 74 provides that clause 66(3), (the rule that an adopted child is to be treated only as the child of the adopter(s) or, in the case of an adoption by a partner of a parent, only as the child of the adopter and the natural parent to whom he is a partner), does not affect an adopted

person's entitlement to a pension payable to or for his benefit which is in payment at the time of his adoption.

Clause 75: Insurance

Clause 75 provides that any rights and liabilities under any insurance policy that a natural parent has effected for the payment on the death of the child for funeral expenses are transferred by virtue of the adoption of that child to the adoptive parents. The adopters are to be treated as if they took out the policy themselves. *Subsection (2)* makes clear that references in *subsection (1)* to adoptive parents are to be read, in the case of an adoption by a partner or a parent, as referring to the adopter and the adopter's partner.

Chapter 5 – Registers

Chapter 5 deals with registration issues surrounding adoption and the duties placed upon the Registrar General.

Clause 76: Adopted Children Register

Subsection (1) places a duty upon the Registrar General to continue to maintain the Adopted Children Register and provides for entries to be made in the Register. *Subsection (2)* provides that the Adopted Children Register is not to be open to public inspection or search. *Subsection (3)* provides that entries may not be made on the Register unless they are made by adoption orders or by the amendment of adoption orders (*subsection (6)* and Schedule 1). *Subsection (4)* provides that a certified copy of an entry on the Register is evidence of an adoption to which it relates. *Subsection (5)* provides that where the birth information is contained in the Adopted Children Register, a certified copy of that entry is to be treated as a certified copy of an entry in the registers of live births. *Subsection (7)* provides that regulations may make provision for any person to have access to any information contained in the Adopted Children Register upon payment of a prescribed fee. *Subsection (8)* provides that regulations made under *subsection (7)* may provide that a relevant period must have expired in relation to the information. The relevant period in relation to the adoption of a child means the expiration of 100 years from the date of the child's birth or such other period as may be prescribed (*subsection (9)*). *Subsection (10)* provides that regulations made under *subsection (7)* allows the Registrar General to make arrangements with any person for the purpose of providing access to information, as mentioned in *subsection (7)* and, for that purpose, to transfer information to that person subject to conditions (including conditions as to the making of payments by that person to the Registrar General).

Clause 77: Searches and copies

Subsection (1) places a duty on the Registrar General to continue to maintain an index of the Adopted Children Register at the General Register Office. *Subsection (2)* provides that any person may search the index of the Register and obtain a certified copy of any entry. However, a person is not entitled to have a certified copy of an entry in the Adopted Children Register relating to an adopted person who has not attained the age of 18 years unless prescribed particulars have been provided to the Registrar General (*subsection (3)*). *Subsection (4)* provides that the terms, conditions and regulations as to payment of fees, and otherwise, applicable under the Births and Deaths Registration (Northern Ireland) Order 1976 are to apply in respect of searches, and supplies of certified copies, under subsection (2).

Clause 78: Connections between the register and birth records

Subsection (1) places a duty on the Registrar General to make traceable the connection between any entry in the registers of live-births or other records which has been marked "Adopted" and any corresponding entry in the Adopted Children Register. *Subsection (2)* provides that public access to this index is prohibited. *Subsection (3)* provides that any such information held under subsections (1) and (2), and any other information which would enable an adopted person to obtain a certified copy of the record of his birth, may only be disclosed by the Registrar General in accordance with this section. *Subsection (4)* provides that, in relation to a person adopted before the appointed day a court may, in exceptional circumstances, order the Registrar General to give such information to a person. The appointed day is defined in *subsection (9)* as the day appointed for the commencement of clauses 55 to 64. *Subsection (5)* provides that the Registrar General is to provide an appropriate adoption agency, upon application by the agency, with any information mentioned in subsection (3). *Subsection (6)* provides that for people adopted before the commencement of clauses 55 to 64, Schedule 2 applies and subsection (5) does not.

Subsection (7) enables the Registrar General to make regulations to set out the manner in which applications must be made by an adopted person aged under 18 who intends to be married or form a civil partnership requesting information as to whether their intended spouse or civil partner may be within the prohibited degrees of relationship for the purpose of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 and the Civil Partnership Act 2004. *Subsection (8)* enables the Registrar General to make regulations requiring the payment of a prescribed fee in respect of information given under clause 78. A fee is not chargeable in respect of an application made under *subsection (7)*.

Clause 79: Adoption Contact Register

Subsection (1) places a duty on the Registrar General to continue to maintain, in accordance with regulations, the Adoption Contact Register at the General Register Office. The Adoption Contact Register is a register in two Parts, designed to facilitate contact between adopted persons and their birth relatives where both parties have expressed a wish for such contact. *Subsection (2)* enables the Registrar General to prescribe in regulations the information about adopted persons who wish to make contact with their relatives to be included in Part 1 of the Adoption Contact Register. *Subsection (3)* provides that the Registrar General may make an entry for an adopted person in Part 1 of the Register if a record of his birth is kept by the Registrar General, he has attained the age of 18 years and the Registrar General is satisfied that the adopted person has such information as is necessary to obtain a copy of his birth record. Under *subsection (4)*, the Registrar General is able to make regulations prescribing the information about relatives of adopted persons to be included in Part 2 of the Adoption Contact Register. It is intended that these regulations will cover information similar to that included in the regulations made under subsection (2), such as names and addresses.

Subsection (5) provides that the Registrar General may only make an entry in Part 2 of the Register for a person who has attained the age of 18 and if the Registrar General is satisfied that he is a relative of an adopted person and has such information as is necessary to enable him to obtain a certified copy of the record of the adopted person's birth. *Subsection (6)* enables the Registrar General to make regulations providing for the disclosure of information contained in one Part of the Register to persons included in the other Part of the Register. Such regulations may provide, for example, that information held on the Register should only be given to the adopted person in order to enable them to make a choice as to whether to initiate contact with their relative(s). *Subsection (6)* also provides that regulations may be made by the Registrar General to set fees for the making or alteration of entries in the Register, and the disclosure of information contained in it.

Clause 80: Adoption Contact Register: supplementary

Clause 80 provides that the Adoption Contact Register is not to be open to public inspection or search (*subsection (1)*). *Subsection (2)* defines relatives. This definition will include, for example, parents, siblings, grandparents, great-grandparents, uncles, aunts, cousins, nephews and nieces, including by blood, half blood, marriage or civil partnership. *Subsection (3)* provides that the Registrar General must not give any information entered in the Register to any person except in accordance with clause 79(6)(a) where regulations may provide for the disclosure of information contained in one Part of the Register to persons for whom there is an entry in the other part. The Registrar General must also not give any information entered in the Register in accordance with regulations made under clause 63(4)(b) which require the

Registrar General to disclose to the appropriate adoption agency any information the adoption agency requires about any entry relating to the adopted person on the Adoption Contact Register.

Clause 81: Interpretation

Clause 81 provides interpretation in respect of the provisions in Chapter 5. It defines the terms “prescribed”, “records”, “registers of births” and “regulations”. It also provides that the Registrar General may maintain in any form any register, record or index he is required to keep under these provisions.

Chapter 6 - Adoptions with a Foreign Element

The provisions in this Chapter incorporate many of the measures of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (“the 2001 Act”) and extend those measures with new safeguards and penalties.

The 2001 Act amended the Adoption (Northern Ireland) Order 1987, making provision to regulate intercountry adoption. The Act (together with equivalent Great Britain legislation) enabled the United Kingdom to ratify the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and introduced sanctions against those failing to follow the proper procedures for bringing children into the United Kingdom. The 2001 Act also clarifies that Trusts have a duty to provide, or arrange to provide, an intercountry adoption service and provides that children who are the subject of a Convention adoption will receive British nationality automatically.

The 2001 Act will largely be repealed when this Bill is implemented, as the majority of the provisions amended the Adoption (Northern Ireland) Order 1987 and have been incorporated into this Bill. Section 1 (power to make regulations giving effect to the Convention), section 2 (Central Authorities and accredited bodies) and Schedule 1 (which sets out the text of the Convention so far as material) of the 2001 Act will remain. Clause 158(1) defines a Convention adoption order as an adoption order which is made by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001. The regulations which are to be made under section 1 of the 2001 Act will apply, with or without modification, to the provisions of this Bill, for example, the conditions which must be satisfied before an application for a Convention adoption order may be made. Convention adoptions made in a country outside the United Kingdom, the Channel Islands or the Isle of Man are recognised, see clause 65(1).

Clause 82: Restriction on bringing children in

Clause 82 imposes restrictions on British residents bringing or causing someone else to bring a child who is habitually resident outside the United Kingdom, any of the Channel Islands or Isle of Man into the United Kingdom with the intention of adopting the child in the United Kingdom, unless the person complies with prescribed requirements and meets prescribed conditions. It also makes it a criminal offence for a British resident to bring or cause someone else to bring a child habitually resident outside the British Islands who he has adopted within the last twelve months into the United Kingdom, unless he complies with prescribed requirements and meets prescribed conditions.

It is intended that regulations will require the British resident to be assessed and approved as suitable to adopt by an adoption agency, including a Great Britain adoption agency, prior to bringing a child into the United Kingdom (*subsection (4)*).

The restrictions in this clause do not apply if the child is intended to be adopted under a Convention adoption order (*subsection (2)*), as the provisions in the Hague Convention will apply in such circumstances.

Regulations may be made to apply any provision of Chapter 3 of this Bill which refers to adoption orders with or without modifications (*subsection (6)*) and that if a notice of intention to adopt has been given, the regulations may impose functions in respect of the child on the authority to which the notice was given.

A person guilty of an offence under clause 82 will be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum or both, or, in the event of the case of being convicted on indictment, to up to twelve months' imprisonment or a fine, or both (*subsections (7) and (8)*).

Clause 83: Giving parental responsibility prior to adoption abroad

Clause 83 provides that the High Court may make an order for the transfer of parental responsibility for a child to prospective adopters who are not domiciled or habitually resident in Northern Ireland but who intend to adopt the child outside the United Kingdom, the Channel Islands or the Isle of Man. An order cannot be made where the prospective adopters meet the requirements of domicile or habitual residence to allow an adoption order to be made in Northern Ireland. Regulations will prescribe the requirements which must be satisfied before an order may be made (*subsection (3)*). An application for an order may not be made unless

the child's home has been with the applicant(s) at all times during the preceding 10 weeks (*subsection (4)*). An order under this clause has the same effect as an adoption order in extinguishing parental responsibility (*subsection (5)*). *Subsection (6)* provides that regulations may be made to apply any provision of this Bill which refers to adoption orders to orders made under this clause with or without modifications.

Clause 84: Restriction on taking children out

Clause 84 imposes restrictions on taking children, who are Commonwealth citizens or habitually resident in the United Kingdom, from the United Kingdom to a place outside the United Kingdom, any of the Channel Islands, and the Isle of Man for the purpose of adoption. It is an offence unless the proposed adopters have obtained an order under clause 83 or the child is removed under the authority of an order under section 59 of the Adoption and Children (Scotland) Act 2007 or section 84 of the Adoption and Children Act 2002. A person will be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum, or both, or, in the event of conviction on indictment, to up to twelve months' imprisonment or an unlimited fine, or both.

Clause 85: Power to modify clauses 82 and 84

Subsection (1) provides a power to provide by regulations that clause 82 does not apply if the adopters or prospective adopters are natural parents, natural relatives or guardians or if the British resident in question is a partner of the parent of the child. *Subsection (1)* also enables conditions to be prescribed which would need to be met for a group to be excluded from the application of clause 82. Different provision can be made in relation to different cases.

Subsection (2) provides a power to provide that clause 84(1) applies with modifications or does not apply if the prospective adopters are parents, relatives or guardians of the child (or one of them is) or the prospective adopter is a partner of a parent of the child. Again, *subsection (2)* enables conditions to be prescribed which would need to be met for a group to be excluded from the application of clause 84 or for clause 84 to be modified in relation to that group. Different provision can also be made in relation to different cases.

Clause 86: Declaration of special restrictions on adoptions from abroad

Clause 86 makes provision regarding the restriction of intercountry adoptions from countries where the Department has determined that it would be contrary to public policy to further the bringing of children into the United Kingdom by British residents in the cases specified in

subsection (2). The provisions apply equally to adoptions from countries that are signatories to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at The Hague on 29th May 1993, and those that are not.

Subsection (2) provides that the cases to which the section applies are, under paragraph (a), where a British resident wishes to bring or cause another person to bring a child who is not a British resident into the United Kingdom for the purposes of adoption by the British resident and there have been, or would have to be, some proceedings in the country that has given rise to the concern or dealings with authorities or agencies there; and, under paragraph (b), where a British resident wishes to bring or to cause another to bring a child into the United Kingdom having adopted the child abroad within 12 months of the date on which he brings the child in. The term British resident is defined in *subsection (8)*.

Subsection (3) provides that the suspension is achieved through a declaration made by order by the Department that ‘special restrictions’ are to apply in relation to bringing children into the United Kingdom in the cases specified in subsection (2). The Department must publish the reasons for making the declaration in relation to each restricted country (*subsection (5)*) and must publish a list of restricted countries, the ‘restricted list’, which it must keep up to date (*subsection (6)*). *Subsection (7)* requires publication of both the restricted list and the reasons in whatever way the Department thinks appropriate for bringing them to the attention of adoption agencies and members of the public.

Clause 87: Review

Subsection (1) requires the Department to keep the restricted list under review. If the Department no longer has reason to believe that it would be contrary to public policy to further the bringing of children into the United Kingdom from a restricted country, the Department is required to revoke the order containing the declaration made in relation to that country (*subsection (2)*).

Clause 88: The special restrictions

Clause 88 makes provision for the special restrictions that may be applied by virtue of clause 86. *Subsection (1)* provides that the Department is not to take any step which it may otherwise have taken to further the bringing of a child into the United Kingdom in the cases specified in clause 86(2).

The effect of the restrictions is that the Department would no longer process intercountry adoption cases from the restricted country. The steps referred to would include, for example, the issuing of a certificate of eligibility to adopt and the forwarding of matching reports from the child's country of origin to the prospective adopters by those acting on behalf of the Department.

Subsection (2) also provides, however, for adoptions to be permitted to continue in exceptional cases, that is, cases where the prospective adopters or adopters are able to satisfy the Department that the adoption should proceed. *Subsection (3)* allows regulations to provide for the procedure to be followed by the Department in the consideration of exceptional cases and a non-exhaustive list of matters that must be taken into account.

Clause 89: Imposition of extra conditions in certain cases

Subsection (1)(a) allows regulations to be made by the Department to set out additional steps agreed between the United Kingdom and a restricted country that the Department normally takes in connection with bringing a child from the restricted country into the United Kingdom, and are not otherwise provided for by any statutory provision, to be specified in the restricted list in relation to that country. *Subsection (1)(b)* states that, where a step has been specified under subsection (1)(a), one or more conditions set out in the regulations must be met in connection with a British resident bringing a child from the relevant restricted country into the United Kingdom in either of the cases specified in clause 86(2). *Subsection (2)* clarifies that such conditions are in addition to any conditions provided for by clause 82 of the Bill or any other statutory provision.

Subsection (3) provides that a person who brings, or causes another to bring, a child into the United Kingdom is guilty of an offence, if any condition required to be met by virtue of subsection (1)(b) is not met. If the step specified in the regulations has already been taken before the country was added to the restricted list, no offence would be committed (*subsection (4)*). A person would be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum, or both, or, in the event of conviction on indictment, to up to twelve months' imprisonment or a fine, or both (*subsection(5)*).

Clause 90: Overseas adoptions

Clause 90 provides that for the purposes of the Bill and the Adoption (Northern Ireland) Order 1987, overseas adoptions are those which are specified by regulations made by the Department describing adoptions effected under the law of any country or territory outside the United

Kingdom, the Channel Islands and the Isle of Man, and are not Convention adoptions (*subsection (1)*). *Subsection (2)* provides that regulations may prescribe the requirements that ought to be met by an adoption of any description effected after the commencement of the regulations for it to be an overseas adoption for the purposes of this Bill. The regulations may contain provision as to the manner in which evidence of any overseas adoption may be given (*subsection (5)*). *Subsection (3)* imposes a duty on the Department to exercise its powers to make an order so as to secure that adoptions made after that date are not overseas adoptions if it considers that they are not likely within a reasonable time to meet the requirements prescribed by regulations.

Clause 91: Modification of clause 66 for Hague Convention adoptions

Clause 91 provides that where the High Court, on an application, is satisfied that each of the conditions set out in *subsection (2)* are met in the case of a Convention adoption, it may direct that clause 66(3) (which provides for the status conferred by adoption) does not apply or does not apply to any extent which may be specified in the direction. The reason for this provision is as follows. Adoption law of the United Kingdom recognises only one type of adoption, which is full adoption, and this creates a new and irrevocable legal relationship between the child and adoptive parents which severs all legal ties between the child and his birth parents. A child adopted in Northern Ireland is to be treated in law as not being the child of any person other than the adopters. In some countries, however, certain forms of adoption do not have the effect of totally severing all ties from the birth parents and these are known as simple adoptions.

Article 26 of the Hague Convention provides for the recognition of both full and simple adoptions. Article 27 of the Hague Convention allows a receiving State to convert a simple adoption into a full adoption if its law so permits and provided the birth parents and relevant parties under Article 4 of the Hague Convention have given their consent to a full adoption. Where the receiving State is Northern Ireland, the Department will ensure that in all cases the birth parents are informed of the effects of a simple adoption in Northern Ireland and seek to obtain their consent to a full adoption prior to a Convention adoption being made in a country outside the United Kingdom, Channel Islands or Isle of Man or a Convention adoption order being made here. Where the receiving State is not Northern Ireland, it is possible that the child may be brought to this country in circumstances where simple adoptions are recognised, both in the State of origin and the receiving State, and so no consent to full adoption has been given. In those cases, the adoption will still be treated as a full adoption by operation of law, but if any issue of status arises where it is felt it would be more favourable to the child to treat the adoption otherwise than as a full adoption, an application may be made to the High Court.

Clause 92: Annulment etc. of overseas or Hague Convention adoptions

Clause 92 provides for the High Court to annul a Convention adoption or a Convention adoption order on the ground that the adoption is contrary to public policy. Where an overseas adoption or a determination under clause 94 is shown to be contrary to public policy or the authority which made the adoption or determination was not competent to entertain the case, the High Court may order that the overseas adoption or determination should cease to be valid.

Clause 93: Section 92: supplementary

Clause 93 makes supplemental provision in respect of annulment of overseas or Convention adoptions and Convention adoption orders. It specifies that the application must be made in the manner and within any period as prescribed in rules of court (*subsection (1)*), that the adopted person or adopter(s) must have been habitually resident in Northern Ireland immediately before the application (*subsection (2)*), and that the court is bound by any finding of fact by the authority when determining whether that authority was competent to entertain the case (*subsection (3)*).

Clause 94: Overseas determinations and orders

Clause 94 makes further provision in relation to overseas determinations and orders. It provides that where any authority of a Convention country (other than the United Kingdom) or the Channel Islands, the Isle of Man or any British overseas territory has the power to authorise, or review the authorisation of, an adoption order made in that country or territory, or to give or review a decision revoking or annulling an adoption order or a Convention adoption, that determination will be recognised in the United Kingdom. This is subject to clause 92 and any subsequent determination.

Clause 95: Power to Charge

Clause 95 provides the Department with the power to charge a fee to adopters or prospective adopters for services provided or to be provided by the Department in relation to intercountry adoptions (*subsection (2)*). The Department may determine how much to charge, and may, in particular, charge a single flat fee or set different fees for different cases (*subsection (3)*), providing the fee income received, taking one financial year with another, is not greater than the cost of providing the services (*subsection (4)*). Subsection (3) also provides the Department with discretion to waive the fee in any given case.

Chapter 7 - Miscellaneous

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Chapter 7 restates, with amendment, the criminal offences in Articles 11 and 59 of the Adoption (Northern Ireland) Order 1987. These deal with restrictions on making arrangements for adoption and payments offered, made or received in consideration of an adoption. In addition, it introduces a new offence which deals with restrictions on preparing reports in connection with adoption. Chapter 7 also sets out who may prosecute offences under the Bill.

In addition, Chapter 7 deals with proceedings in the civil courts. It aligns provision for appeals from the county court, with the procedure in the Children (Northern Ireland) Order 1995 and makes provision about the hearing and reporting of proceedings under the Bill. New provision is made to impose an obligation on the courts when dealing with proceedings for an adoption or placement order to draw up a timetable to ensure that the matter is dealt with without delay. In addition, provision is made for the appointment of Children's Court Guardians (previously known as Guardians ad Litem). The Bill gives a new right to such officers, in connection with the hearings with which they are involved, to inspect records held by an adoption agency.

This Chapter also provides for recognition in Northern Ireland of adoption orders made in England and Wales, Scotland, the Channel Islands and the Isle of Man.

Clause 96: Restriction on arranging adoptions, etc.

Clause 96 sets out the steps in relation to arranging an adoption that must not be taken by a person who is not an adoption agency or a person acting in pursuance of an order of the High Court. *Subsection (2)* lists nine steps that should not be taken, for example seeking, offering or placing a child for adoption. *Subsections (3) and (4)* provide that certain steps do not apply where one or both of the prospective adopters are parents, relatives or guardians of the child, or where a prospective adopter is a partner of a parent. *Subsection (6)* enables the Department to make an order amending subsections (1) to (4) where it considers an amendment necessary or expedient. This power could be used, for example, to specify additional steps for inclusion in the list in subsection (2) to further protect the interests and welfare of children or other parties affected by adoption. *Subsection (5)* allows regulations to be made prescribing who should be treated as an adoption agency in respect of intercountry adoption for the purpose of this provision.

Clause 97: Offence of breaching restrictions under section 96

Clause 97 provides that where a person contravenes clause 96(1) he is guilty of an offence. It also provides that if the offender is an adoption society, the person who manages the society is also guilty of the offence. Defences are provided in *subsections (2) to (4)*. *Subsection (5)* sets

out that the penalty on summary conviction is imprisonment for a term not exceeding six months or a fine not exceeding £10,000, or both.

Clause 98: Restriction on reports

Clause 98 provides restrictions on the preparation of certain reports in connection with adoption. *Subsection (1)* provides a regulation making power so that a person who is not within a prescribed description may not, in any prescribed circumstances, prepare a report for any person about the suitability of a child for adoption or of a person to adopt a child or about the adoption, or placement for adoption, of a child. The intention is to use this power to regulate the preparation of assessment, post-placement and post-adoption reports and to ensure that only suitably skilled or professionally qualified staff carry out the necessary evaluations and report writing. *Subsection (2)(a)* provides that an offence is committed if a person contravenes subsection (1). *Subsection (2)(b)* provides that an offence is committed where someone causes a person to prepare a report or submits to any person a report which has been prepared in contravention of subsection (1). *Subsection (3)* provides that where an offence is committed by a person who works for an appropriate voluntary organisation, the manager of that appropriate voluntary organisation is also guilty of the offence. A defence for a person charged with an offence under subsection (2)(b) is provided by *subsection (4)*. *Subsection (5)* sets out the penalty on summary conviction where an offence is committed as imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

Clause 99: Prohibition of certain payments

Clause 99 prohibits certain payments or rewards in connection with the adoption of a child. *Subsection (1)* provides that this clause applies to any payment (other than an excepted payment as set out in clause 100) which is made for the adoption of a child, giving any consent for the child's adoption, or the removal from the United Kingdom of a child who is a Commonwealth citizen, or is habitually resident in the United Kingdom, to a place outside the United Kingdom, the Channel Islands or the Isle of Man for the purpose of adoption. Subsection (1) also applies to any payment in connection with certain steps taken to arrange an adoption, and the commissioning or preparation of reports where it would contravene clause 98(1).

Subsection (3) provides that an offence is committed where a person makes any payment to which this section applies, agrees or offers to make any such payment, or receives or agrees to receive or attempts to obtain any such payment. *Subsection (4)* provides the penalty on summary conviction where an offence is committed as imprisonment for a term not exceeding six months or a fine not exceeding £10,000, or both.

Clause 100: Excepted payments

Clause 100 provides that payments may be excepted in certain circumstances. The intention is to allow payments to be made for reasonable expenses, such as legal and medical expenses in relation to an adoption, payments to an adoption agency for expenses incurred for arranging for the adoption of a child whose country of origin is outside the United Kingdom, or for reasonably incurred travel and accommodation expenses where a child is being taken out of the United Kingdom for the purpose of adoption as permitted by clause 84(2).

Subsection (1) provides that a payment is an excepted payment if it is made in compliance with a provision under this Bill, the Adoption and Children (Scotland) Act 2007 or the Adoption and Children Act 2002. The payment of reasonable expenses incurred in connection with an adoption, proposed or actual, to an adoption agency is excepted by *subsection (2)* if it is made by a parent or guardian of a child, or by a person who adopts or proposes to adopt a child. *Subsection (3)* provides that a payment for legal or medical expenses is an excepted payment if it is incurred by a person in respect of an application to a court for an adoption order, a placement order, or an order under clause 23 (Contact), clause 49 (Post-adoption contact) or clause 83 (Giving parental responsibility prior to adoption abroad). *Subsection (4)* provides that a payment made where a child is removed from the United Kingdom for the purpose of adoption is an excepted payment if the condition in clause 84(2) is met, and the payment is made for reasonably incurred travel and accommodation expenses.

Clause 101: Sections 96 to 100: interpretation

Clause 101 provides interpretation in respect of the provisions in clauses 96 to 100.

Clause 102: Pre-commencement adoptions: information

Clause 102 amplifies the regulation-making power in clause 9 to provide that the Department may make regulations in connection with adoptions made before the appointed day (i.e. commencement of clauses 55 to 64). *Subsection (1)* provides that regulations may make provision for assisting persons adopted before the appointed day to obtain information about their adoption and to facilitate contact between them and their relatives.

It is intended that this is to be used to provide for a system in which adoption agencies registered to provide such services may, on application by a person adopted before the Bill is implemented or a birth relative of such a person, act as intermediaries and, with the informed consent of the adopted person, facilitate contact between him and his relatives. It is envisaged that in

performing this role adoption agencies will be obliged, where an adoption agency arranged the adoption, to seek advice and information from that agency. It is also envisaged that the adoption agency is to be able to obtain information held by the Registrar General, where this is necessary in order to perform their intermediary function.

It is intended that the regulations made under *subsections (3) and (4)(a)* will set out the circumstances when adoption agencies and the Registrar General are to be able or required to disclose information to each other. For example, an adoption agency is to be authorised to disclose information to the Registrar General. The Registrar General is required to disclose tracing information to the adoption agency.

Provision is made under *subsection (4)(b)* for regulations to be made authorising or requiring the court to disclose information to an adoption agency. In addition, subsection (4) also makes express provision for regulations to impose conditions on the disclosure of information under this clause so that identifying information is properly protected, for example to ensure that the appropriate consent is in place before any disclosure is made. Regulations may be made under subsection (3) of clause 9 for unauthorised disclosure of the information provided for by clause 102(1) to be a criminal offence punishable on summary conviction with a maximum level 5 fine.

Subsection (5) provides that regulations may authorise the charging of prescribed fees for the disclosure of information by adoption agencies, the Registrar General and the court.

Subsection (6) provides that an authorisation or requirement made under subsection (4)(a), has effect, in spite of any restriction on the disclosure of information in Chapter 5 relating to the Registers. *Subsection (7)* requires the approval of the Department of Finance to the making of regulations under subsections (3) to (5) which relate to the Registrar General. *Subsection (8)* provides definitions in relation to this section.

Clause 103: Proceedings for offences

Clause 103 sets out that proceedings for offences under clauses 9 and 58 are ordinarily to be brought by the Regulation and Quality Improvement Authority. Such offences can only be prosecuted by another body with the written consent of the Director of Public Prosecutions for Northern Ireland.

Clause 104: Appeals

This Memorandum refers to the Adoption and Children Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

Subsection (1) provides that an appeal lies to the High Court against the making by a County Court of any order under this Bill or any refusal by a County Court to make such an order as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 and the appeal were brought under Article 60 of that Order.

Subsection (2) provides that, on an appeal under subsection (1), the High Court may make such orders as necessary to give effect to its determination of the appeal. The High Court may also make such incidental or consequential orders as appear to it to be just (*subsection (3)*).

Subsection (4) provides that any order of the High Court made on an appeal under subsection (1) (other than one directing that an application be re-heard by the county court) is to be treated, for the purposes of the enforcement of the order and any power to vary, revive or discharge orders, as if it were an order of the County Court from which the appeal was brought and not an order of the High Court.

Subsections (1) to (4) are subject to Article 166(14) and (15) of the Children Order (*subsection (5)*).

Clause 105: Privacy

Clause 105 provides that rules of court may make provision for the court to sit in private in any proceedings under the Adoption and Children Bill. *Subsection (3)* aligns the protection for the privacy of children concerned in proceedings under Article 170 of the Children Order and the Bill.

Clause 106: Children's Court Guardians

Subsection (1) provides that for the purposes of any relevant application (defined in *subsection (5)* for the making, varying or revoking of a placement order or a contact order under clause 23, or the making of an adoption order or a parental responsibility order under clause 83), rules of court must provide for the appointment of a children's court guardian in prescribed cases. *Subsection (2)* provides that rules may provide for the children's court guardian to act on behalf of the child, to safeguard the interests of the child in a prescribed manner, prepare reports on matters relating to the child's welfare and perform other prescribed functions. *Subsection (3)* provides that the report must include any matter prescribed by rules (unless the court orders otherwise) and must be made in the manner required by the court. *Subsection (4)* sets out who should not be appointed as a children's court guardian under subsection (1). Rules of court

may make provision as to the assistance which the court may require a children's court guardian to give to it (*subsection (6)*).

Subsection (8) provides how children's court guardians are to be appointed under this clause. The Department may by regulations provide that children's court guardians must be selected from persons employed or approved by such special agency or other public body as may be prescribed.

Subsection (8) is not to be taken to prejudice the power of the Lord Chief Justice to confer or impose duties on the Official Solicitor under section 75(2) of the Judicature (NI) Act 1978 (*subsection (9)*).

Subsection (10) provides that the regulations may in particular make provision for the employment or approval of persons by such special agency or other public body as may be prescribed, the qualifications for appointment as a children's court guardian, the training to be given to children's court guardians and for monitoring the work of children's court guardians. A "public body" is defined in clause 158 as a body established by or under any statutory provision. The Department may, with the approval of Department of Finance, make such grants as the Department considers appropriate with respect to expenditure incurred under regulations made under subsection (8) (*subsection (11)*).

Clause 107: Right of access to adoption agency records

The powers of a children's court guardian have been extended under clause 107 of the Bill, which creates a right at all reasonable times for a children's court guardian appointed under clause 106(1) to examine and take copies of any records of, or held by, an adoption agency relating to a proposed or actual application under Part 1 of the Bill in respect of the child concerned. Any copy of such a document (or part of a document) will be admissible as evidence of any matter referred to in any evidence that the children's court guardian may give in the proceedings or any report the children's court guardian makes to the court in those proceedings. A children's court guardian appointed under Article 60 of the Children Order already has the right to access records held by an authority in connection with specified proceedings under that Order (Article 61 refers). Clause 107 provides an equivalent right to access adoption agency records.

Clause 108: Evidence of consent

Clause 108 provides for a document signifying consent to be admissible in evidence without any further proof of the signature of the person who executed it when the document has been witnessed in accordance with rules of the court.

Clause 109: Effect of certain Scottish orders and provisions

Subsection (1) provides that a Scottish adoption order or an interim adoption order will have the same effect in Northern Ireland as it has in Scotland. *Subsection (2)* provides that Scottish permanence orders which include provision granting authority for a child to be adopted are to have effect in Northern Ireland as they do in Scotland. *Subsection (3)* provides for it to be an offence in Northern Ireland to contravene the restrictions on removing a child who is living with prospective adopters where the adoption has been agreed or where the person applying for adoption has provided the home (the provisions in sections 20 - 22 of the Adoption and Children (Scotland) Act 2007). The penalty, set out in subsection (3), is three months' imprisonment or a fine not exceeding level 5 on the standard scale, or both.

Subsection (5) allows for orders made under section 24 of the Adoption and Children (Scotland) Act 2007 (return of child removed in breach of certain provisions) to have effect in Northern Ireland as if they were orders of the High Court under clause 37 of this Bill (recovery orders).

Clause 110: Effect of certain orders made in England and Wales

Under clause 110, an adoption order or placement order (including the variation or revocation of a placement order), a contact order or a recovery order made in England and Wales has the same effect in Northern Ireland. If a child is placed for adoption, or an adoption agency is authorised to place a child for adoption, with parental consent under the Adoption and Children Act 2002, the relevant provisions concerning parental responsibility also have effect in Northern Ireland.

Subsection (2) sets out that it is an offence for an individual to contravene any of the provisions of the Adoption and Children Act 2002 mentioned in *subsection (3)* and the penalties attached to such an offence. *Subsection (3)* specifies provisions for prohibitions and restrictions on removal of a child.

Clause 111: Use of adoption records from Great Britain, etc.

Clause 111 allows any document that can be used as evidence in England and Wales, Scotland, the Isle of Man, or any of the Channel Islands, under the provisions set out in this clause, to also be used as evidence of that matter in Northern Ireland.

Clause 112: Channel Islands and the Isle of Man

Clause 112 enables regulations made under *subsection (1)* to provide for:

- orders that are made by a court in the Isle of Man or any of the Channel Islands, and appear to correspond to orders made under a provision of the Bill, to be given effect in Northern Ireland (*subsection (1)(a)*);
- any reference in the Bill to an adoption agency to include an adoption agency in the Isle of Man or any of the Channel Islands (*subsection (1)(b)*);
- a reference in the Bill to other legislation, such as the Children Order, to include reference to corresponding legislation of the Isle of Man or any of the Channel Islands (*subsection (1)(c)*). An example would be where there is a reference to a care or supervision order made under the Children Order;
- a reference in the Bill to the United Kingdom or to Great Britain to also include the Isle of Man or any of the Channel Islands (*subsection (1)(d)*).

Subsection (2) enables regulations to modify any provision of the Bill as it applies to an order made by a court in the Isle of Man or any of the Channel Islands or to anything done under the law of the Isle of Man or any of the Channel Islands.

Clause 113: Avoiding delay

Clause 113 is intended to avoid delay in the court process. *Subsection (1)* imposes an obligation on the court, where it is dealing with any matter where the issue of whether a placement or adoption order should be made, or any other question with respect to such an order, to draw up a timetable and give any directions that are necessary to ensure that that timetable is adhered to.

Rules of court may prescribe periods within which steps must be taken in relation to such proceedings and make other provision with respect to such proceedings for the purpose of ensuring that such questions are determined without delay (*subsection (2)*).

Clause 114: Service of notices etc.

Subsection (1) provides that any notice or information required to be given under the Bill may be given by post. *Subsection (2)* provides that section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents) is to have effect as if in subsection (1) the word “registering” is omitted.

Clause 115: Jurisdiction of courts

Clause 115 provides that “court” in the Bill means the High Court or a county court (*subsection (1)*). This is subject to any provision made by or under Schedule 7 to the Children Order. The Department of Justice may, after consulting the Lord Chief Justice, make an order to provide for courts of summary jurisdiction to be included among the courts who may hear proceedings under this Part (*subsection (4)*).

Part 2 – Children Order Amendments

Clause 116: Definition of family proceedings

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

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

Clause 117: Article 8 orders: authority foster parents

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

Article 9(3) of the Children Order provides that authority foster carers may not seek leave of the court to apply for an Article 8 order (including a residence order) in respect of a child unless they have the consent of the authority, they are a relative of the child, or the child has been living with them for three years preceding the application. Paragraph 4 of Article 9 provides that the 3 year period mentioned in the paragraph 3(c) need not be continuous but must have begun more than 5 years before the making of the application.

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

Clause 118: Duration of residence orders

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

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

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

is looked after by an authority by inserting after "Article 8 order" the words "other than a residence order".

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

Clause 119: Special guardianship

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

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

Special Guardianship Orders - Article 14A

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

- any guardian of the child with whom the child has lived for one year;
- an authority foster carer with whom the child has lived for one year;

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

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

Paragraphs (7) onwards set out the application process. Applicants must give 3 months' written notice to the authority of their intention to apply for the order. The only exception to this is where a person has the leave of the court to make a competing application for a special guardianship order at a final adoption order hearing, in which case the 3 month period does not apply. This is in order to prevent the competing application delaying the adoption order hearing.

On receipt of notice, the authority must then investigate and prepare a report to the court about the suitability of the applicants to be special guardians and any other relevant matters. It is intended that regulations may prescribe matters to be covered in the report. *Paragraph (11)* provides that the authority may arrange for someone else to carry out the investigation or

prepare the report. Where the child in question is being looked after by an authority, *paragraph (10)* places a duty on the authority to prepare the report for court in accordance with prescribed arrangements. Such arrangements may, for example, include that the report is considered by a Panel prior to its issue to the court to ensure that a proper assessment process has been followed and that all relevant matters have been considered and included in the report. *Paragraph (12)* provides that the court may not make an order unless it has received a report covering the suitability of the applicants.

Special guardianship orders: making – Article 14B

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

Special guardianship orders: effect – Article 14C

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

The intention is that the special guardian has full responsibility for all the day to day decisions about caring for the child or young person and for taking decisions about his upbringing. However, the order retains the basic legal link with the birth parents, unlike adoption. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited. They retain the right to consent, or not, to the child's adoption or placement for adoption (*paragraph 2(b)*). *Paragraph (5)* provides that the special guardian must also take

reasonable steps to inform each parent of the child or each guardian of the child, if the child dies.

Special guardianship orders: variation and discharge – Article 14D

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

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

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

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

Special guardianship orders: supplementary – Article 14E

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

Special guardianship support services – Article 14F

New *Article 14F* makes provision for authority support services for special guardians, children subject to special guardianship orders and others. Each authority must arrange to provide support including counselling, advice and information, and such other services as are prescribed in regulations (*paragraph (1)*). *Paragraph (2)* provides that the power to make regulations under paragraph (1)(b) is to be exercised so as to secure that authorities provide financial support. Regulations will be made prescribing the circumstances where authorities must, at the request of special guardians, children subject to special guardianship orders, their parents and other prescribed persons, carry out an assessment of that person's needs for special guardianship support services (*paragraph (3)*). It is intended to use these regulations to ensure that authorities put in place a range of support services to be available where appropriate for special guardians and children subject to special guardianship orders, their parents, and where appropriate, to others, which could include members of the birth family. *Paragraph (4)* gives authorities the discretion to carry out an assessment of need for support services at the request of any other person.

Paragraphs (5) to (12) govern the assessment process and, where support services are to be provided, the arrangements for their provision. Regulations will specify when an authority must provide special guardianship support services assessed as needed to a prescribed person (*paragraph 6*). As with adoption support services, the needs assessment may be carried out at the same time as an assessment of that person's needs for any other purpose (*paragraph (11)*). Again, the intention is to facilitate joined up planning and provision of public services support. There is provision for an authority to delegate assessments and the provision of special guardianship support services to another authority or prescribed person (*paragraph (10)*) if they so desire, to assist with administration of services/ efficient use of resources.

Subsections (2) to (5) of clause 119 amends Articles 3, 56, 158 and 159 of the Children Order. *Subsection (2)* amends Article 3 to apply the welfare checklist to special guardianship applications. *Subsection (3)* amends Article 57 to enable the court, where in any care or supervision proceedings it makes a special guardianship order, to also make an interim supervision order with respect to the child if it considers it necessary to do so to satisfactorily safeguard the child's welfare. The court may do so if it considers a special guardianship order is the better option for the child but the child has not lived with the special guardian for at least one year. This will mean the authority must continue to safeguard the child's welfare during

the period of the interim supervision order and remain involved in cases where the child has not lived with their special guardian for at least a year before the order was granted. *Subsections (4) and (5)* amend Articles 159 and 160 to make provision about the appointment of guardians by the court for children after the death of a special guardian.

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

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

Clause 120: Ascertainment of children's wishes

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

Article 18 sets out the general duty of authorities to safeguard and promote the welfare of children in need in their area and subject to that duty, to promote the upbringing of those children by their families. This is to be achieved through the provision of personal social services appropriate to those children's needs and the provision of services for the family of

the child where it would safeguard and promote the child's welfare. *Subsection (1)* inserts a new paragraph (4A) into Article 18. It places a duty on an authority that, when determining what services to provide to a child in need, the authority so far as reasonable practicable and consistent with the child's welfare, should ascertain the child's wishes and feelings and have due regard to them.

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

Article 66 places a duty on an authority to investigate where a child in its area has been made subject of an emergency protection order or taken into police protection, or where the authority has reasonable cause to suspect the child has or is likely to suffer significant harm. It requires the authority to consider what course of action to take, sets out the direction the enquiries should take and provides that certain bodies must assist the authority in investigations provided that this would not be unreasonable. *Subsection (3)* of clause 120 inserts new paragraph (5A) into Article 66. It has the effect of placing a duty on the authority that when making a determination under this Article, they must as far as is reasonably practicable and consistent with the child's welfare, ascertain the wishes and feelings of the child and give due consideration to them, again taking into consideration the age and understanding of the child.

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

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

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

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

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

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

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

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

Subsection (1) inserts new *paragraph (1A)* into Article 26 of the Children Order to provide that the duty of an authority under Article 26(1) to safeguard and promote the welfare of a child looked after by an authority includes, in particular, a duty to promote the child’s educational achievement.

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

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

Clause 123– Corporate Parenting Principles

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

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

- to act in their best interests of, and to promote their well-being;
- to encourage them to express their views, wishes and feelings;
- to take account of their views, wishes and feelings;
- to help them gain access to and get the best use of the services provided by an authority, and by any relevant partner;
- to promote high aspirations and seek to secure the best outcomes for them;

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- for them to be safe and for stability in their home lives, relationships and education or work; and
- to prepare them for adulthood and independent living.

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

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

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

Clause 124: Placement of looked after children with prospective adopters

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

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

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

Clause 125: Accommodation for children: requirements

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

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

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

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

Clause 126: Authority foster parents

Clause 126 inserts a new provision after Article 28 of the Children Order (regulations under Article 27). The new Article 28A (Authority foster parents) places fostering panels on a statutory basis and provides that regulations made under Article 27(2)(a) may make provision that a child may not be placed with an authority foster parent unless that person is approved as an authority foster parent in accordance with prescribed arrangements (*paragraph (1)(a)*) and

for a review procedure to be established in respect of a qualifying determination made by that panel (*paragraph (1)(b)*).

New *paragraph (1)(b)* and *paragraphs (2)-(10)* will enable regulations to make provision for prospective or existing foster parents to apply to the Department for an independent review of the determination of a fostering service provider regarding a person's suitability or continuing suitability to foster a child. A qualifying determination is defined in *paragraph (2)*. Regulations may also include the duties and powers of a panel, the administration and procedures of a panel, the appointment of members, the payment of fees to panel members, the duties of any person in respect of the reviews carried out by the panel and the monitoring of such reviews (*paragraph (3)*).

Paragraphs (4) and (5) provide that the regulations may impose a duty to pay a fee to the Department. It gives the Department the power to recover the costs of reviews. However, these costs will not be recoverable from the person who made the application for an independent review. *Paragraph (5)* provides that the sums payable to the Department must not, taking one financial year with another, exceed the costs incurred in performing the independent review functions.

Paragraph (6) provides that the Department may make an arrangement with an organisation to perform independent review functions on behalf of the Department. An organisation is defined in *paragraph (10)* as including a public body or a private or voluntary organisation. The organisation operating the IRM on behalf of the Department must perform its functions in accordance with any directions which the Department may give. If an organisation performs such functions on behalf of the Department, the organisation must adhere to any directions given by the Department (*paragraph (7)*). *Paragraph (8)* make provision for payments to be made to the organisation by the Department. *Paragraph (9)* makes provision similar to *paragraph (5)* where the Department makes payments in respect of an arrangement under *paragraph (6)* for its independent review functions to be performed on its behalf by an organisation.

The definitions of "financial year" and "independent review function" are both included in *paragraph (10)*.

The intention behind this amendment is to allow the Department to regulate the operation of fostering panels in Northern Ireland. Fostering panels are the mechanism by which approval to foster and the removal of approval to foster (following a process of review by the panel) is decided in Northern Ireland. Regulations made under clause 126 will provide an additional

means for foster parents to challenge a proposal relating to their approval, or the continuation of their approval, by applying to a panel established by the Department for a review of the determination. It is intended that this independent review mechanism for foster parents will operate alongside the mechanism to be established under Clause 12 to consider applications from prospective adopters for an independent review of an adoption agency determination that they are not suitable to adopt or to withdraw their earlier approval to adopt. Where the prospective adopters/foster parents apply for an independent review, the independent review panel convened to review the case will consider the case afresh and make a recommendation to the adoption or fostering agency, The agency must take that recommendation into account, along with that of the fostering or adoption panel, when making its decision.

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 to the child if the child requests it from the authority (*paragraph (2)*).

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

Clause 128: Former relevant children: continuing functions

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

Subsection (2) inserts a new Article 34DA into the Children Order. This sets out what constitutes a continuing care arrangement, the duties placed on authorities for the duration of the arrangement and the conditions that underpin the support from the authority. New

paragraph (2) provides that a continuing care arrangement is one where the young person is someone who was in care immediately prior to their 18th birthday as an eligible child, and that person continues to reside with their former foster carer once they turn 18.

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

Subsection (3) inserts a new Article 34DB (further advice and support) into the Children Order to extend existing duties which an authority has under Article 34D of the Children Order towards former relevant children (as defined in that Article). It applies to former relevant children who have reached age 21 but not 25, or such other age as may be prescribed in regulations (*paragraph (1)*).

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

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

The authority may continue to provide a former relevant child with advice and support after they have reached the age of 25, or any other prescribed age, if the authority is satisfied that the former relevant child has needs that cannot be met other than by providing such advice and support (*paragraph (7)*). *Paragraph (8)* provides that an authority must offer to provide a

former relevant child with advice and support if they are not already receiving it, as soon as possible after they reach the age of 21, and at least once every 12 months thereafter.

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

New Article 34DC extends the duties of authorities to appoint a personal adviser to include a former relevant child who informs the responsible authority (that is, the authority that formerly looked after him) that he is pursuing or intends to pursue a programme of education or training but to whom the authority would otherwise owe no duty under Article 34D because the young person is over 21 years of age and has completed (or abandoned) the programme set out in his original pathway plan (*paragraphs (1) and (2)*). In relation to such a young person, who must be under 25 years (or such age as may be prescribed), the authority must also carry out an assessment of needs, prepare a pathway plan and determine what assistance is required (*paragraph (3)*). The authority may provide assistance such as contributing to expenses incurred by the person in living near the place where is, or will be receiving education or training or they can make a grant available to meet expenses connected with his education or training (*paragraph (5)*).

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

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

Clause 129: Local offer for care leavers

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

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

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

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

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

Clause 130: Inquiries into representations

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

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

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

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

Subsection (5) amends Article 45(4) to provide that the requirement to involve an independent person in the complaints procedure is subject to the provisions in new Article 45(5A) that is inserted by *subsection (7)*. New Article 45(5A) enables regulations to be made providing that the requirement for an independent person does not apply in relation to the procedure for any informal resolution stage established in regulations.

Clause 131: Review of cases of looked after children

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

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

Clause 132: Advocacy services

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

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

New *paragraph (4)* provides for authorities to monitor the provision of assistance under this clause to ensure that they comply with regulations. This reflects Article 45(6) of the Children Order. New *paragraph (5)* provides that every authority shall give such publicity to their arrangements for the provision of assistance as they consider appropriate. This reflects Article 45(8) of the Children Order.

Clause 133: Definition of harm

Clause 133 amends the definition of harm in Article 2(2) (Interpretation) of the Children Order to make clear that the harm a child may be at risk of suffering includes any impairment of the child's health or development as a result of seeing or hearing the ill-treatment of another person, such as domestic violence. "Ill-treatment" is already defined in Article 2 of the Children Order. It is broader than physical violence and includes sexual abuse and forms of ill-treatment which are not physical. The effect is that any harm a child suffers because a parent is being harassed or intimidated is caught by the definition of "harm". The amendment will apply to all proceedings where the court applies the 'welfare checklist' set out in Article 3(3) of the Children Order. This includes proceedings for contact or residence orders.

Clause 134: Care plans

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

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

Clause 135: Contact: children in care of authority

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

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

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

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

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

Clause 136: persons authorised to act as children's court guardian

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

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

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Clause 137: Renaming of guardians ad litem

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

Clause 138: Interests of children in proceedings

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

Clause 139– Definition of privately fostered child

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

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

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

Article 107(7)(b) provides that a child is not privately fostered if he is a protected child. A protected child is defined in Article 33 of the Adoption (Northern Ireland) Order 1987. The

provisions in the 1987 Order relating to protected child are being repealed by the Adoption and Children Bill. *Subsection (3)* provides that paragraph 7(b) should be omitted.

Where a notice of intention to adopt a child (who has been brought into the country for the purposes of intercountry adoption) has been provided to an authority, the authority will have certain functions to discharge in respect of him, under regulations made under clause 84. Following the repeal of the ‘protected child’ provisions in the Adoption (Northern Ireland) Order 1987, such a child may also be considered to be a privately fostered child as defined in Article 106 of the Children Order. If he is, then the authority would have duties in respect of the child under regulations made under Article 108 of the Children Order. The functions imposed on the authority under these regulations are separate from, but additional and similar to, those that may be imposed under the regulations made under clause 82. *Subsection (4)* of clause 139 inserts a new paragraph (7)(c) in Article 107 to include in the list of exemptions a child in respect of whom an authority has functions by virtue of regulations under clause 82(6)(b) of the Adoption and Children Bill, or corresponding functions by virtue of regulations under section 1 of the Adoption (Inter-country Aspects) Act (Northern Ireland) 2001. The effect of the provision is to exclude a child in respect of whom a notice of intention to adopt has been served from the definition of a privately fostered child, so preventing the authority being subject to two different sets of duties in respect of the same child.

Clause 140 – Welfare of children who will be privately fostered

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

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

Article 108(2) of the Children Order gives the Department the power to make regulations about visits by an authority to privately fostered children and imposing requirements which are to be met by the authority in carrying out their functions under this Article. *Subsection (3)* inserts a

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

Clause 141 – Notification of fostering: public awareness

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

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

Clause 142- Privacy for children in proceedings

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

Clause 143 – Annual Report

Article 181 of the Children Order requires the Department, after consultation with the Lord Chancellor, the Department of Education and the Department of Finance, to prepare and lay before the Assembly an annual general report on the operation of the Order. Clause 143 omits

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Article 181 and Schedule 5 to the Bill repeals it. This annual report was considered to be no longer needed as it has been superseded by numerous other reports and information in respect to the operation of certain provisions of the Children Order such as the Children Order Advisory Committee (COAC) Reports, Northern Ireland Guardian Ad Litem Agency Annual Reports and Statistics, Delegated Statutory Functions Reports and Children's Services Statistical Data.

Part 3 – Miscellaneous and Supplementary

Clause 144: Northern Ireland Adoption and Children Act Register

Subsection (1) places a duty on the Regional Board to establish and maintain a register, to be called the Northern Ireland Adoption and Children Act Register, containing details of children who are suitable for adoption, children for whom an adoption authority is considering adoption and prospective adopters who are suitable to adopt a child. Regulations will provide what information will be held about the children who are suitable, or being considered, for adoption and prospective adopters. It will also contain additional prescribed information about such persons in respect of events occurring to them after their inclusion in the register (*subsection (1)(b)*). This provision may be used, for example, to enable the register to record information about the stability of adoptive placements.

Subsection (2) enables the Department to make regulations in order for the register to contain prescribed information about children an adoption agency in Great Britain is satisfied are suitable for adoption, prescribed information about prospective adopters who a Great Britain adoption agency is satisfied are suitable to adopt a child, and additional prescribed information about such persons in respect of events occurring to them after their inclusion in the register.

Subsection (3) enables the regulations to apply any of the provisions in clauses 145 to 151, with or without modification, for the purpose of giving assistance in finding persons with whom children may be placed for purposes other than adoption. This provision may be used to extend the remit of the system to cover children needing other types of placements.

The Register will not be open to public inspection or search and regulations will make provision about retention of information. Information will be kept in the Register in any form the Regional Board considers appropriate, but is most likely to be held electronically (*subsections (4) to (6)*).

Clause 145: Use of an organisation to establish the register

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Clause 145 deals with arrangements for the discharge of any of the functions under clause 144. *Subsection (1)* enables the Regional Board to discharge the function of establishing and maintaining the Register by making arrangements with an organisation, defined by clause 151(1) as including a public body and a private or voluntary organisation, to do so. It also enables that organisation to disclose information entered in, or compiled from information entered in, the Register on behalf of the Regional Board.

Where the Regional Board enters into an arrangement with an organisation under subsection (1), it may issue directions in respect of the way in which the organisation operates the Register (*subsection (3)*). *Subsection (2)* enables the Regional Board to make payments to the organisation in respect of this arrangement. *Subsection (4)* provides that the Regional Board must not exercise its powers under subsection (1) or (3) without the consent of the Department. *Subsection (5)* provides that, where the Regional Board discharges the function under subsection (1) by making arrangements with an organisation, the references to the registration organisation are to that organisation.

Clause 146: Use of an organisation as an agency for payments

Clause 146 provides that regulations may authorise an organisation maintaining the Register on behalf of the Regional Board to act as an agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies. This may require adoption agencies to pay or receive such sums through the organisation. The Regional Board may issue directions in respect of the way in which the organisation is to perform the functions under this section (*subsection (2)*). *Subsection (3)* requires the Regional Board not to exercise its powers under subsection (2) without the consent of the Department.

Clause 147: Supply of information for the register

Clause 147 deals with the supply of information to the Regional Board or the registration organisation for entry in the Register. Regulations will set out the type of information which must be passed by adoption agencies to the Regional Board or the registration organisation for inclusion in the Register (*subsection (1)*), and in prescribed form and manner in which that information must be given (*subsection (2)*). *Subsection (3)* provides that regulations will make provision enabling adoption agencies to enter prescribed information in the register and regulations will prescribe the form and manner in which this information is to be entered (*subsection (4)*). *Subsection (5)* provides that the regulations may require adoption agencies to pay a fee to the Regional Board or the registration organisation in respect of information to be entered on the Register. Such a fee would contribute towards the administrative costs of placing

information on the Register and would not include any element of profit. *Subsection (6)* clarifies that these requirements are subject to the parties to whom the information relates consenting to inclusion of the information on the Register. Where the information relates to a child, the regulations will set out who may consent to the sharing of the information on the child's behalf.

Clause 148: Disclosure of information

Clause 148 provides that information entered in the Register may only be disclosed by the Regional Board or the registration organisation in accordance with *subsections (2), (3) or (4)*, clause 149 or clause 150. Under *subsection (6)* any information may be released from the Register with the authority of the Regional Board.

Under *subsection (2)*, prescribed information held on the Register may be disclosed by the Regional Board or the registration organisation either to an adoption agency which is looking for suitable adoptive parents with whom to place a child, or to an adoption agency acting on behalf of approved adoptive parents who wish to adopt a child. Under *subsection (5)*, regulations will set out the steps which adoption agencies must take upon receipt of this information.

Subsection (3) provides that regulations may make provision permitting the disclosure of information entered in the register, or compiled from information entered in the register to an adoption agency or a GB adoption agency for any prescribed purpose, or for the purpose of enabling the information to be entered in a register which is maintained in GB and which contains information about children who are suitable for adoption or prospective adopters who are suitable to adopt a child. *Subsection (4)* enables information either held on the Register or compiled from information held on the Register to be disclosed to prescribed categories of persons for statistical or research purposes or other prescribed purposes. *Subsection (8)* enables fees to be charged in respect of information given to adoption agencies under *subsections (2) and (3)* or in respect of information given to prescribed categories of persons for statistical or research purposes, or other prescribed purposes, under *subsection (4)*. Disclosure of information otherwise than in accordance with the provisions set out in this section is an offence, punishable on summary conviction by up to three months' imprisonment or a fine not exceeding level 5 on the standard scale, or both.

Clause 149: Search and Inspection of the register by prospective adopters

Clause 149 provides for regulations to allow for the search and inspection of the register by prospective adopters who are suitable to adopt a child to enable them to identify a child on the register for whom they might be appropriate adopters. A prospective adopter is suitable to adopt a child if an adoption agency is satisfied that they are suitable to have a child placed with them for adoption (clause 151(2)(b)). The regulations may restrict access to certain parts of the register only, or only to specified content on the register (*subsection (2)*) and the regulations may also set out terms and conditions of access to the register (*subsection (3)*). *Subsection (4)* provides that regulations may prescribe the steps that prospective adopters must follow in relation to the information they have received through their search of the register. *Subsection (5)* provides that the regulations may prescribe the payment of a fee to the Regional Board or the registration organisation by the prospective adopters for the searching or inspecting of the register.

Clause 150: Search and inspection of the register by adoption agencies

Subsection (1) provides for regulations to allow for the search and inspection of the register by adoption agencies where the adoption agency is acting on behalf of a child who is suitable for adoption, to assist the agency in finding prospective adopters with whom it would be appropriate for the child to be placed, and where an adoption agency is acting on behalf of prospective adopters who are suitable to adopt a child, to assist the agency in finding a child appropriate for adoption by them. The regulations may restrict access to certain parts of the register only, or only to specified content on the register (*subsection (2)*) and the regulations may also set out terms and conditions of access to the register (*subsection (3)*). *Subsection (4)* provides that regulations may prescribe the steps that adoption agencies must follow in relation to the information they have received through their search of the register. *Subsection (5)* provides that the regulations may prescribe the payment of a fee to the Regional Board or the registration organisation by adoption agencies for the searching or inspecting of the register.

Clause 151: Supplementary

Clause 151 provides general interpretation in respect of provisions in clauses 144 to 150. *Subsection (4)* clarifies that nothing authorised or required to be done by virtue of clauses 144 to 150 constitutes an offence under clauses 97, 98 or 99.

Clause 152: Time limit within which proceedings may be brought

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Clause 152 sets out when summary proceedings for offences may be brought and the period after which an offence cannot be brought. This clause applies to offences in clauses 9, 58, 97, 98, 99 or 148.

Clause 153: Research and Investigations

Clause 153 provides that the Department may conduct, promote or assist (by grants or otherwise) any person conducting research or investigations into any matter connected with the functions of Part 1 of this Bill of an adoption authority or the Department.

Clause 154: Amendments, transitional and transitory provisions, savings and repeals

Subsection (1) makes provision for Schedule 3 which contains minor and consequential amendments. *Subsection (2)* provides for transitional and transitory provisions and savings to have effect under Schedule 4. *Subsection (5)* provides for the statutory provisions set out in Schedule 5 to be repealed.

Clause 155: Regulations and orders

Subsection (1) provides that all regulations, other than those to which *subsection (2)* applies, are to be subject to the negative resolution procedure. Those to which *subsection (2)* applies are subject to the draft affirmative resolution procedure (*subsection (3)*) and these are listed in *subsection (2)*. *Subsection (4)* lists the orders that must be subject to the draft affirmative resolution procedure and *subsection (5)* provides that an order under clause 157, other than an order which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation, is subject to negative resolution. *Subsection (6)* enables regulations and orders to contain ancillary provision.

Clause 156: Rules of court

Clause 156 enables rules of court to be made to deal generally with all matters of procedure. Under this clause, “rules of court” includes family proceedings rules and county court rules as well as rules as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954. Family proceedings rules cited in *subsection (1)* has the same meaning given in Article 12(5) of the Family Law (Northern Ireland) Order 1993 (*subsection (2)*).

Clause 156 provides in particular for rules to say where and to whom notice is given of hearings for placement and adoption orders. *Subsection (3)* provides that this notice must state the date and place of the application and the person to whom notice is given need not attend the hearing,

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unless they wish to attend or the court requires it. *Subsection (4)* makes provision as to whom that notice must be given. For applications for placement and adoption orders this is every person who can be found whose consent is necessary or could be dispensed with under clause 18 or 44. In these cases rules may prescribe that where such a person cannot be found another relative must be given such notice. For applications to vary or revoke a placement order, notice should be given to each party whose consent to the placement order was necessary (or would have been required but for the dispensation provisions). For applications for an adoption order where advance consent has been given, notice should be given to each parent or guardian unless they have stated that they do not wish to be provided with such notice. *Subsection (5)* defines a relative. Rules of the court may, for the purposes of the law relating to contempt of court, authorise the publication, in such circumstances as may be specified, of information relating to be proceedings held in private involving children (*subsection (6)*).

Clause 157: Supplementary and consequential provision

Clause 157 provides that the Department of Health, Department of Finance and the Department of Justice may by order make any supplementary, incidental or consequential provision, or any transitory, transitional or saving provision that that Department considers is necessary or expedient to give effect to the purposes of this Bill (*subsections (1) and (2)*). An order made under this clause may amend, repeal or modify any statutory provision (*subsection (3)*).

Clause 158: Interpretation

Subsection (1) provides general interpretation. *Subsection (2)* provides that any power conferred to prescribe a fee by regulations includes power to prescribe a fee not exceeding a prescribed amount, a fee calculated in accordance with the regulations and a fee determined by the person to whom it is payable, being a fee of a reasonable amount. *Subsection (3)* provides a definition of “couple” for the purposes of this Bill, to include a married couple, two persons who are civil partners of each other or two persons (whether of different sexes or the same sex), living as partners in an enduring family relationship. The latter does not include two people where one person is the other’s parent, grandparent, sister, brother, aunt or uncle (*subsection (4)*). *Subsection (5)* provides that the relationships set out in subsection (4) include relationships of the full blood or half blood and also include the relationship of an adoptive parent with his adopted child, or his former adopted child, but do not include any other adoptive relationships. *Subsection (6)* provides that for the purposes of this Bill, a person is the partner of a child’s parent if the person and the parent are a couple but the person is not the child’s parent.

Clause 159: Commencement

This Memorandum refers to the Adoption and Children Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

Clause 159 provides that clauses 155 and 157 to 160 will come into operation on the day after this Bill receives Royal Assent. The remainder to the clauses will come into operation on a day or days appointed by order made by the Department of Health.

Clause 160: Short title

Clause 160 details that this Bill may be cited as the Adoption and Children Act (Northern Ireland) 2021.

Schedules

Schedule 1: Registration of Adoptions

Paragraph 1 of Schedule 1 makes provision for an entry of certain adopters in the Adopted Children Register in accordance with a direction in the adoption order to the Registrar General. Regulations made by the Department of Finance will prescribe the form of the entry. It deals with the making of entries in the registers of live-births relating to the child who has been adopted and for marking any entries in the Adopted Children Register relating to a child who has been re-adopted.

Paragraph 2 makes provision for registration of adoption orders made in any part of Great Britain, the Isle of Man or the Channel Islands in the register of live-births. It also deals with marking any entry in the Adopted Children Register relating to a person who has been re-adopted in one of these jurisdictions and for cancellation of any such marking where an order has been quashed, revoked or a successful appeal brought.

Paragraph 3 deals with registration of other adoptions. It provides for registration of overseas and Convention adoptions which meet specified requirements. These are referred to as "registrable foreign adoptions".

Paragraph 4 makes provision for the amendment of orders and rectification of entries and markings in the Adopted Children Register and the registers of live-births.

Paragraphs 5 and 6 deal with re-registration of birth and cancellation in registers on legitimation.

Schedule 2: Disclosure of Birth Records by Registrar General

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In the case of adoptions taking place before the provisions for the disclosure of information under clauses 55 to 64 come into operation, Schedule 2 places a duty on the Registrar General to supply an adopted person, on application and subject to certain conditions including payment of a fee, with information to enable him to obtain a certified copy of the record of his birth (*paragraph 1*).

Paragraph 2 provides that, before the Registrar General gives any information to an applicant under *paragraph 1*, the Registrar General must inform the applicant that counselling services are available to the applicant, and where they may be obtained from. If the applicant chooses to receive counselling the Registrar General must send to the person or body providing the counselling the information to which the applicant is entitled.

Under *paragraph 2* counselling is available from an appropriate voluntary organisation, a registered adoption society within the meaning of section 2(2) of the Adoption and Children Act 2002 or an organisation within section 144(3)(b) of that Act. It is also available from any HSC trust in Northern Ireland or, if the applicant is in England and Wales, at the General Register Office or from any local authority or registered adoption support agency and, if the applicant is in Scotland, from any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

Paragraph 3 provides that any adoption agency must provide counselling if asked by the adopted person.

Paragraph 4(1) provides that where a person applies for information under this Schedule and was adopted before 18 December 1987, the Registrar General must not give the information to the applicant unless the applicant has attended an interview with a counsellor arranged by a person or body from whom counselling services are available. *Paragraph 4(2)* provides that where the Registrar General is prevented by *paragraph 4(1)* from giving information to a person who is not living in the United Kingdom, he may give the information to any body which the Registrar General is satisfied is suitable to provide counselling to that person, and has notified the Registrar General that it is prepared to provide such counselling.

Schedule 3: Minor and consequential amendments

Schedule 3 lists the minor and consequential amendments of the Adoption and Children Bill.

Schedule 4: Transitional and transitory provisions and savings

Schedule 4 provides for transitional and transitory provisions and savings.

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Provision in this Schedule amends the Adoption (Northern Ireland) Order 1987 in order to enable changes to the Adoption Service which are introduced by the Bill to be implemented in advance of the Bill as a whole.

Paragraph 1 makes provision in respect of adoption support services. *Paragraph 1(1)* provides that the facilities provided by an HSC trust or the Regional Board as part of the service maintained under Article 3(1) of the Adoption (Northern Ireland) Order 1987 include such arrangements as may be required by regulations for the provision of adoption support services to prescribed persons. *Sub-paragraph (2)* provides that the regulations made under sub-paragraph (1) may require an HSC Trust or the Regional Board, on request, to carry out an assessment of the needs for adoption support services of a prescribed person. Under *sub-paragraph (2)(b)*, where a person's needs for adoption support services are identified in an assessment, the trust or the Board must decide whether to provide adoption support services to that person. Where a decision is taken to provide services, in prescribed circumstances, the trust or the Board will be required to prepare a plan for the provision of services (*sub-paragraph (2)(c)*). The intention is to use these provisions to implement the new framework for adoption support services including financial support early in respect of adoptive families and prospective adoptive families.

Paragraph 6 inserts a new paragraph (1A) into Article 60 of the Adoption (Northern Ireland) Order 1987 to make clear that the restrictions on advertising in that Article include publishing an advertisement by electronic means, such as the Internet. Sub-paragraph 6(b) provides for the penalty on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

Schedule 5: Repeals

Provisions to be repealed are to be found in Schedule 5. The Adoption and Children Bill will repeal current adoption legislation, the Adoption (Northern Ireland) Order 1987 except for Parts 1 and V.

FINANCIAL EFFECTS OF THE BILL

31. Current estimates for the implementation costs of the Bill is circa £13.8 million in year 1, with recurrent costs of circa £12.6 million per annum for year 2 and £12.3 million for year 3 post implementation. Expenditure will not be incurred before 2023/24 when the funding will be required to underpin the suite of regulations to be made under the Bill

come into operation. The Bill focusses mainly on improvements and streamlining of current processes. It is anticipated that there will be additional staffing costs and these have been factored in to the estimated total additional costs for implementation of the Bill. As the Bill gives rise to additional financial implications, it requires a recommendation from the Minister of Finance under section 63 of the Northern Ireland Act 1998. The Minister of Finance, has indicated that he is content to confirm his agreement to the Bill.

HUMAN RIGHTS ISSUES

32. The provisions of the Bill are compatible with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

33. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted an Equality Screening exercise on the policy proposals. A full EQIA is not required as the policy underpinning the Adoption and Children Bill will have a positive effect on all section 75 groups.
34. During consultation with key stakeholders in the development of the Bill, no negative impacts were identified. Further engagement with key stakeholders following consultation on the Bill did not identify any negative impacts. Further comprehensive consultation and Equality screening will be undertaken as Statutory Guidance and Regulations are drafted to implement the provisions in the Bill. As a significant level of consultation on the Bill has been undertaken, and it is considered that the Bill will have a positive impact on section 75 categories, it is considered that a full EQIA will not bring any additional information to this process.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

35. The Regulatory Impact Assessment concluded that as the majority of the provisions in the Bill restate current provisions in existing adoption legislation, place existing requirements on a statutory basis, or tighten existing arrangements, it is not anticipated to have any significant impact on business, charities or the voluntary sector. No direct costs will be created for voluntary sectors.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

36. The Bill introduces a new legal framework for access to and disclosure of adoption information. This information will be known as protected information and safeguards have been introduced to manage the risks of processing personal data. A Data Protection Impact Assessment has been carried out. As is currently the case, the Department is not responsible for the collation and processing of domestic adoption personal data. The privacy risks for information collated in relation to looked after children and adoptions will therefore continue to reside with the HSC Board, HSC Trusts, NIGALA, the General Register Office, the Northern Ireland Courts and Tribunal Service, and Voluntary Adoption Agencies which collate and process this data. These organisations are the data controllers for the information processes for these purposes. In relation to Intercountry adoption applications, the Department is the Central Authority and is responsible for the safe transit of data (in respect of adopters and children) between the HSC Trusts and the sending authority abroad. The Department also confirms the documentation provided by the British Embassy, High Commission or Consulate (based on information contained in an application made by adopters for entry clearance for the adoptive child to enter the UK for the purposes of adoption). In certain circumstances, i.e. adoptions from Non-Convention Recognised Countries, the Department sends adoption applications overseas by courier and notifies the adoption agency in Northern Ireland and prospective adopters in writing. Various processes are involved depending on whether a child is to be adopted from a Hague Convention country. These provisions are replicated in the Adoption and Children Bill.
37. Data in relation to adoption case records is currently collated and stored securely as prescribed in the Adoption Agencies Regulations (Northern Ireland) 1989. These records will include information on looked after children being considered or placed for adoption, the child's birth parents and families, prospective adopters and their families, including special category data such as race, ethnic origin, information on any previous criminal convictions, health and medical information, and sexual orientation. Other organisations will have policies in place in relation to the management of records, confidentiality and sharing of information which is compliant with GDPR and the child's data protection rights. Regulations will provide for the transfer, in prescribed circumstances, of information held, or previously held, by an adoption agency to another adoption agency. The Bill will not alter the current position in relation to the access to information or disclosure of information relating to adoptions that took place prior to the enactment of the Bill. For adoptions that take place following the enactment, the Bill sets out a new statutory framework in relation to 'protected information', defined in the Bill as 'any

identifying information sought by someone other than the person it is about'. 'Identifying information about a person' is defined as 'information, which whether taken on its own or together with other information disclosed by an adoption agency, identifies the person or enables the person to be identified'. Specific provision is made in the Bill to replicate and strengthen current provision in the Adoption (Northern Ireland) Order 1987 in relation to the functions of an adoption agency in respect of: disclosing information to an adopted adult; information to be kept about a person's adoption; and, in relation to 'protected information', new provisions are introduced in respect of: restrictions on disclosure of protected information; disclosing protected information about adults; disclosing protected information about children; disclosure of other information (not protected). Regulations to be made under the Bill may authorise or require an adoption agency to disclose protected information to a person who is not an adopted person, however, this is done in the context of ensuring the rights of the individuals have been adequately protected and are compliant with requirements under ECHR.

RURAL NEEDS IMPACT ASSESSMENT

38. A Rural Needs Impact Assessment has been carried out. This noted that the Bill will impact equally on children, parents/carers/adopters, voluntary organisations, courts and social work staff regardless of where they live in Northern Ireland.

LEGAL AID IMPACT ASSESSMENT

39. A Legal Aid Impact Assessment has been carried out. This has identified that the majority of the provisions in the Adoption and Children Bill will result in no additional impact on the legal aid services that are already provided in relation to proceedings under the Children (Northern Ireland) Order 1995 and the Adoption (Northern Ireland) Order 1987, as provided for under the Access to Justice (Northern Ireland) Order 2003.
40. However, the impact assessment has identified some new provisions in the Adoption and Children Bill which we consider will have an impact for legal aid services.
41. Under Adoption proceedings, these include:
- Orders for contact during placement (clause 23 of Bill refers). This new order may be made by the Court as part of placement order proceedings. It is anticipated that the court will set out the arrangements for contact in the majority, if not all, such cases. In

such cases, there will be no additional impact in terms of legal aid. However, following placement, and before an adoption order is made, persons specified in the Bill may apply to the court for such an order, or for such an order to be varied or revoked. In these cases, there will be a legal aid impact.

- Order for post-adoption contact (clause 49 of Bill refers). It is anticipated that the court will set out the arrangements for contact in the majority, if not all, adoption order proceedings. In such cases, there will be no additional impact in terms of legal aid. However, following the making of the adoption order, persons specified in the Bill may apply to the court for either an order for contact or an order for no contact, or for leave to apply for such an order. In these cases, there will be a legal aid impact.

42. Under Children Order proceedings, these include:

- Special Guardianship Orders (SGOs), a new legal order intended to provide greater permanence for children who cannot return to their birth families but for whom adoption is not appropriate. It is anticipated that some of these applications may replace applications for other orders, for example, those that may previously have applied for a residence order or an adoption order may, instead, pursue the new SGO. As a result, some of the additional costs for legal aid may be offset by a reduction in legal aid costs that might have been sought as part of pursuing a different order. The court may also make an SGO in any proceedings for a care or supervision order, if the court considers that an SGO should be made even though no such application has been made. In such cases, there will be no additional impact for legal aid services.

43. A suite of subordinate legislation will be required to implement the Bill. Regulations and statutory guidance will need to be drafted, consulted on and made in order to implement both the Adoption and Children Order provisions in the Bill. Implementation will be on a phased basis, with the first phase not expected until 2023/24 at the earliest.

44. It is therefore expected that there will be no impact for legal aid services until 2024. The Department will work closely with the Department of Justice regarding the timing of implementation, as the phasing schedule for implementation of the Bill is developed.

This Memorandum refers to the Adoption and Children Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

LEGISLATIVE COMPETENCE

The Minister for Health, Robin Swann MLA, has made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Adoption and Children Bill would be within the legislative competence of the Northern Ireland Assembly.”

SECRETARY OF STATE CONSENT

The Secretary of State has consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering this Bill.

RECOMMENDATION

The Minister of Finance, Conor Murphy MLA, has made the following recommendation as required under section 63 of the Northern Ireland Act 1998.

“As Minister of Finance, I recommend this Bill to the Assembly as is required by section 63 of the Northern Ireland Act 1998.”