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Dear Sir/Madam,

Adoption and Children Bill – Health Committee Consultation

Action for Children work to protect and support children and young people, providing practical and emotional care and support within community settings. We want every child and young person to have a safe and happy childhood with the foundations they need to thrive at every stage of life.

We are a leading UK children's charity with over 150 years' experience of supporting the most vulnerable children in society and their families. We have been working in Northern Ireland for over 20 years. In the last year our local and regional services reached nearly 15,000 children, young people and adults in Northern Ireland.

Action for Children has played a significant role in children's services planning and child protection structures over the last 20 years. We are currently represented on the Children and Young People's Strategic Partnership and its Belfast, Northern, Western and South Eastern Outcome Groups. We sit on Locality Planning Groups in all five Health and Social Care Trust areas and we co-ordinate Family Support Hubs in Fermanagh, Omagh, Waterside and across the Northern Trust. We sit on the Safeguarding Board for NI and its Northern and Western Area Safeguarding Panels. A senior Action for Children manager co-chairs the Belfast Local Engagement Partnership.

Where we work



We welcome this opportunity to provide comment on the Adoption and Children Bill which is now making its way through the Assembly. As everyone is aware these changes are very overdue and it was unfortunate that the Bill previously failed to make it into legislation due to the collapse of the Assembly. We responded to the consultation in 2017 which, as well as revisiting adoption reform which had started life in 2006 with *Adopting the Future*, took the opportunity to make wider changes relating to the Children (NI) Order 1995. Our broad position is unchanged in that we remain supportive of the intent of the Bill in relation to both adoption and children's legislation. The need for revised legislation was already urgent in 2017, so it is vital that this Bill does make it to statute within the life of the current Assembly.

We have had a very useful discussion with the Department of Health Bill Team in which we were able to discuss key details of the Bill. This is a large and complex piece of legislation, many provisions are enabling, and their full realisation will require future regulations and guidance. We are grateful for the Department's recognition that those areas for future regulation and guidance will need careful consultation within the children's sector.

In providing more detailed comment to assist the Health Committee our submission falls into two parts. Firstly, there are areas of the Bill where we want to emphasise support for particular changes, and where we feel the Assembly will need to be mindful of issues in relation to implementation (including resources), subsequent regulations and/or monitoring by the Committee. Secondly, there are two areas where we are unhappy with the Bill as presented.

Support for changes and the need for careful implementation

1. Clause 5 deals with **Adoption Support Services**. The strengthening of the assessment of need is welcome. There is a challenge in implementation. This will require much more collaborative working between Health and Social Care Trusts and the Education Authority, and if that could be achieved it should be constructed in terms of all children who are care experienced, including those who have been adopted. Which leads to the further challenge of resources. As we stand today, we do not have the resources to properly support care experienced children and those who care for them. A substantial amount of the need in this area cross cuts with the educational, health and social well-being needs of children with disabilities or who have statements of special educational needs. More sophisticated commissioning which looks at need in the round and facilitates greater local integration of service might deliver more help within existing budgets. However, even with this, delivering the intent contained here will be challenging. Therefore, it is our view that the Department should commit to a timetable of engagement with delivery partners on how to ensure the intent of collaborative work is realised.
2. In the explanatory and financial memorandum to the Bill it is suggested in relation to Clause 11 **Adoption Agency Fees**, that fees *'will not include any element of profit'*. This will need careful unpacking. Current commissioning for many services from voluntary and community organisations does not provide enough funding to support organisational infrastructure costs and, it could be argued, are tendered at what is effectively below cost price. While this Clause relates specifically to Adoption Agencies, the development of any regulations would benefit from a wider sectoral examination of the actual cost of services and clearly distinguishing between charitable and not-for-profit organisations on the one hand, and private sector businesses and 'not-for-profit' trading arms of private enterprises on the other.
3. The **independent review mechanism** in adoption determinations to be established at Clause 12 is welcome. Some thought will need to go into the best administrative arrangements for this in Northern Ireland. It is likely that the body which takes on this role would be best placed to do the same for fostering determinations when this has been established and to provide this service on a regional basis for HSC Trusts and independent agencies.
4. We welcome the introduction of **Special Guardianship Orders (SGOs)** (Clause 119). This provides greater parental responsibility for long term carers, creating a more normal family context without the need to use adoption. However, there were substantial concerns about the misuse of SGOs when they were introduced in England, effectively as a way of getting children out of the care system and allowing local authorities to withdraw, both financially and in terms of other supports. This was a familiar and well-

trodden path in adoption, where long term carers came under inappropriate pressure to adopt to ensure that children remained with them. Implementing SGOs is unlikely to be a path to savings and should not be viewed as such. Carers are likely to still require financial support and will still require access to a range of support services. The implementation of SGOs will require detailed regulation, guidance and training within children's services, both public bodies and the voluntary and community sector. There will need to be an implementation programme with courts, the Judicial Studies Board and the Law Society to ensure there is a shared understanding of the law and how it will operate in practice. It is vital that SGOs are not seen as a 'go to' replacement for long term fostering. There is a real danger in thinking about where children who come into the care system should live, of trying to establish a 'gold standard' option. Decisions that are focused on the needs of children will require lots of different options. SGOs will be an important addition to fostering, kinship care, residential, specialist provision, adoption and the use of residence orders where children cannot remain with their family of origin. Careful thought will need to be given in regulations and guidance to how assessments for SGOs are conducted and how decisions will be made. The wishes and feelings of children will be important. There is some discussion of the use of panels for decision making within Trusts and whether these should be specialist – fostering, SGO, adoption. This may not encourage a holistic assessment of all the options, which is what a court will want to see in the application for any order. It might be better to have a single Permanence Panel within Trusts that considers all options. It will be vital that the same arrangements are in place in all Trusts. Our understanding is that Regulations for Care Planning will address this.

5. We support the strengthening of ascertaining **children's wishes** (Clause 120).
6. We support the changes at Clause 121 for children in need that will give broader powers to make **payment in cash**.
7. The duty to promote **educational attainment** (Clause 122) is important but this is not something that HSC Trusts can achieve without assistance from the Education Authority and schools. This suggests a need for a corresponding duty for the Education Authority and schools. The Departments of the Economy and Communities also have a role to play here, particularly as educational attainment for care experienced people cannot be reduced to attainment up to the age of 18 years. The majority of children in care are on a longer attainment journey than their peers that will take them into their 20s and beyond. The cross Departmental nature of this makes this an area for consideration under the Children Services Co-operation Act (NI) 2015. In this regard it is interesting to cross reference the current Review of Children's Social Care in England where care experienced people are talking about making being a care experienced a type of protected characteristic that recognises a continuing need for specific supports into adult life, not least in education, training and employment.

8. Regulations arising from Clause 125 regarding **accommodation for children** will warrant close scrutiny to ensure that Northern Ireland does not follow recent regulations in England which have effectively left children aged 16 and 17 exposed to a range of unregulated and unsuitable accommodation.
9. We welcome the changes in Clause 126 in relation to **Authority Foster Parents** that will support Fostering Regulations and arrangements for Foster Care Panels. Articles 75 and 76 of the Children (NI) Order 1995 are linked to Articles 27 and 28 providing a statutory underpinning for independent fostering agencies to assess and approve foster carers and accommodate children for HSC Trusts. It is important that changes to the legislation ensure that independent fostering providers are still fully covered. With Fostering Regulations to follow it will also be important to ensure that Trust and independent fostering services are all treated as regulated services and inspected with the same regularity and to the same standards.
10. The strengthening of arrangements for **children who are no longer looked after**, at Clause 128 is particularly welcome.
11. Clause 135 in relation to **contact for children in care** is needed to ensure that the best interests and the welfare of children are correctly balance with parental rights to contact and considerations under Article 8 Right to respect for private and family life of the Human Rights Act 1998.

Areas of concern

12. We strongly oppose the intention at Clause 143 to revoke Article 181 of the Children Order. We note the Department of Health has decided to go for repeal despite 83% of respondents to the 2017 consultation being in favour of amending to require a three year report. The Department suggests that this requirement is covered by a range of reports that were not available when the Children Order was drafted. It cites the role of the Children Order Advisory Committee which is no longer active. (Its replacement, the shadow Family Justice Board, does not seem to have taken root either). The intent of the original legislation is now well reflected in and strengthened by the Children's Services Co-operation Act, recognising that meeting the needs of children is a cross-departmental, whole Executive task, and that any Assembly should want to reassure itself as to the implementation and working of such critical legislation for members of society who have no direct voice in the Assembly through the franchise. It is not merely a matter of presenting data to the Assembly or lodging it in the Assembly Library. This is about the analysis and synthesis of data relating to children, and accountability to democratic institutions for essential services to a protected group in society. This would align with the responsibilities of the Commissioner for Children and Young People and with reporting responsibilities under the UN Convention on the Rights of the Child. In the absence of a NI Law Commission it would also present a more regular opportunity to

consider the need for amendments to existing legislation or the need for new legislation. It could also align with the outcomes approach in the Programme for Government, mirroring the approach of the Scottish Government in establishing high level outcomes for children and young people. For politicians and the public it would present a regular set piece opportunity to reflect as a society on how we are all delivering for children. In this regard it should probably be received on a cross committee basis with the Health Committee taking the lead. Our view is that repeal would be a very retrograde step and send out the wrong signal about the Assembly's priorities in relation to children and young people. We would like to see Article 181 amended to be a three year cross departmental report on the functioning of the Order and the needs/rights of children.

13. We are disappointed that the Department has not moved to put the Children and Young People's Strategic Partnership (CYPSP) on a statutory footing. While we understand that this is a complex task in terms of a number of pieces of legislation, this was consulted on in 2017 and there was clear support for proceeding with this change. The CYPSP is well established and putting it on a statutory footing at a time when the HSC Board is moving into the Department and the Public Health Agency is being refocused, would have strengthened planning for children and interagency working. With the introduction of the Integrated Care System (ICS) imminent it would have also provided a good test of how to put similar arrangements on statutory footing as the ICS will have to be put on a statutory footing in the future particularly if its constituent parts have spending powers. The proposals in the consultation would also have seen the Safeguarding Board for NI refocus on the working of the child protection system and be a sub-group of the CYPSP. This would have been a very positive move which would have seen child protection within the context of family support, reaffirming the philosophy at the heart of the Children Order. We realise that this will not be included in the legislation before the Assembly. We would however like to see a firm timetable set for taking these changes in children's planning and partnership arrangements forward.

There are significant resource implications arising from this Bill. Some of these will relate to the provision of support, some in relation to implementation, particularly training. Some of the changes require changes to structures or the addition of structures. As the Department have indicated it cannot all be implemented at once. There are huge pressures in the system which pre-dated COVID but which have certainly been intensified by the pandemic. Not least of these are the shortage of children's social workers and delays in the courts. Monitoring the implementation of the legislation and securing resources will be a task for the Committee for some time.

We also feel very strongly that it is vital that the Bill gets through this time. It is unthinkable and unconscionable that this legislation might fail to reach the statute book again. We fully understand that the politics of Northern Ireland can result in instability in the political institutions, but we cannot afford to be without this legislation. A raft of vital reforms through regulation and guidance are dependent on this Bill being passed. In that context, as we have

said, we are broadly supportive of the Bill and have endeavoured to be constructive in this response. We have highlighted areas that will need detailed work and monitoring in implementation, and only have one clause where we feel the Bill must be changed. Our view would be that if there are areas of the Bill that are problematic and they can be removed without undermining key areas, then it would be better to do that than prevent the whole Bill from getting through.

We would be happy to provide further information to the Committee if that would be helpful. If you have any questions or require additional information please contact our Policy Advisor, Sheena McMullen Tel 07925 416094
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Your faithfully,

Lorna Ballard
National Director Northern Ireland