

Adoption and Children Act (Northern Ireland) 2022

Support for Care Leavers

A Consultation Document

Date of issue: 27th October 2022

Action required: Responses by 19th January 2023

Contents

| | |
|--|---------|
| Ministerial Foreword | Page 3 |
| 1. Background | Page 5 |
| 2. What does the Adoption and Children Act (NI) 2022 provide for? | Page 6 |
| 3. Purpose of this consultation | Page 8 |
| 4. Assessment of needs: children who are victims of trafficking or are unaccompanied asylum-seeking children | Page 9 |
| 5. Suitable accommodation: matters to be considered | Page 12 |
| 6. Assessment of Impact | Page 14 |
| 7. Arrangements for consultation | Page 15 |
| Privacy, Confidentiality and Access to Consultation Responses | Page 16 |
| Privacy Notice | Page 17 |

Ministerial Foreword

The recently enacted Adoption and Children Act (Northern Ireland) 2022 (“the Act”) provides for additional support to be made available to care leavers. As a consequence, the Children (Leaving Care) Regulations (Northern Ireland) 2005 require amendment to give effect to this additional support. Consultation on the proposed content of the Act was carried out in 2006 and again in 2017. I also gave my commitment to improve the support and services available to care leavers in the strategy “A Life Deserved – “Caring” for Children and Young People in Care in Northern Ireland” published in 2021.

I am committed to ensuring that all care leavers, preparing for independent living have appropriate and timely support in place to meet their particular needs. It is very likely that such care leavers do not have the support of friends or family when moving out of care for the first time to live independently. The vast majority of young people living at home with families will have ample support from family when leaving home for the first time. Children in care and care leavers are some of the most vulnerable children and young people in society.

This consultation seeks your views on two additional important issues which were not included in any of the previous consultations to the Act and which I consider should be reflected in the amendment to the Leaving Care Regulations.

The first issue concerns a growing number of care leavers who may have been victims of human trafficking or are unaccompanied asylum-seeking children. Those young people have very particular needs because of that status. We want to ensure that Health and Social Care Trusts, when undertaking an assessment of the care leaver’s needs, consider any needs the young person may have as a result of that status.

The second issue relates to the suitability and affordability of accommodation which the care leaver will be living in when they leave care. I consider that every child and young person should have access to a stable and secure placement in suitable accommodation that can meet their needs and, most importantly, keep them safe. I

consider regulations should stipulate the factors a Trust must take into consideration in relation to accommodation before a care leaver moves to that accommodation.

We need to work together to deliver the support that these vulnerable young people need and deserve. Your views on these matters will assist my Department in deciding how the Regulations should be amended.

A handwritten signature in black ink, appearing to read 'Robin Swann', with a stylized, cursive script.

Robin Swann
Minister of Health

1. Background

1.1 In January 2017, the Department launched a public consultation on the Adoption and Children Bill. As part of that consultation, views were sought on proposals to include provision in the Bill that would amend the Children (Northern Ireland) Order 1995 (the Children Order) to extend care to care leavers. The proposals included:

- Whether the Going The Extra Mile (GEM) Scheme should be placed on a statutory footing; and
- Whether some services should be extended to include care leavers up to the age of 25, on request.

1.2 There was overwhelming support for these proposals – 50 responses were received, with 82% of respondents agreeing that the GEM Scheme should be placed on a statutory footing and 94% of respondents agreeing that services should be extended.

1.3 As a result, the relevant provision was inserted in the Bill, prior to its introduction in the Northern Ireland Assembly in September 2021. The Bill subsequently completed its passage in the Assembly and received Royal Assent on 27 April 2022.

2. What does the Adoption and Children Act (NI) 2022 provide for care leavers?

2.1 Sections 128 and 129 of the Act will, when commenced, insert new Articles in the Children Order which will extend the support that will be available to looked after children who are preparing to leave, or have left, the looked after system, until they reach the age of 25. These new Articles will place new duties on each authority (i.e. HSC Trust):

- The Going the Extra Mile Scheme, which has been operating for some time on a non-statutory basis, will be placed on a statutory footing to enable care leavers to continue living with their foster parents up to age 21. Each Trust, when carrying out an assessment of an eligible¹ child's needs, must determine whether it would be appropriate to provide advice, assistance and support, including financial support, to enable the young person to remain in a continuing care arrangement with their former foster parent (new Article 34AA). New Article 34DA then places a duty on a Trust, where it is consistent with the welfare of the former relevant child², to monitor such an arrangement and to provide advice, assistance and support, including financial support, to the former relevant child and the former foster parent in order to maintain the arrangement, until they reach the age of 21.
- Support provided to care leavers who are in education or training will be extended up to age 25 (from age 24) (paragraph 36 of Schedule 3).
- Care leavers aged between 21 and 25 will be able to apply for further assistance to start a new course of education or training (new Article 34DC) or request further advice and support (new Article 34DB). This

¹ "eligible child" has the same meaning given in Article 34A(3) of the Children (Northern Ireland) Order 1995

² "former relevant child" has the same meaning given in Article 34D(1) of the Children (Northern Ireland) Order 1995

advice or support may continue beyond age 25 if a Trust considers it is needed.

- For young people receiving such support, advice or assistance, the Trust must appoint a Personal Adviser, carry out an assessment of the young person's needs and prepare a pathway plan for them.
- For those former relevant children over the age of 21 but under the age of 25, who do not wish to receive advice and support, a Trust must offer advice and support as soon as the former relevant child reached age 21 and at least once in every 12 month period.
- The Act also includes a power for the Department to amend the age limit of 25, if required at some stage in the future.
- Trusts will also be required to publish information on the services they offer for care leavers in preparation for adulthood and independent living (see section 129 which inserts new Article 34G). This will be known as the Local Offer for Care Leavers. It will ensure that care leavers and those acting on their behalf are fully aware of what is available to them in service terms.

2.2 The intention is to introduce these changes during 2023/24.

2.3 In order to do this, in addition to commencing the relevant provisions of the Act, we also need to make consequential amendments to the Children (Leaving Care) Regulations (Northern Ireland) 2005³ ("the 2005 Regulations") to reflect and incorporate the new provisions. As these amendments only reflect the existing provision in the Act, and do not introduce new policy, further public consultation on these consequential amendments is not required.

³ [The Children \(Leaving Care\) Regulations \(Northern Ireland\) 2005 \(legislation.gov.uk\)](https://legislation.gov.uk)

3. Purpose of this consultation

3.1 However, when considering the amendments to the 2005 Regulations, we have identified two possible additional amendments:

- To place a duty on an authority, i.e. HSC Trust, when carrying out an assessment of the needs of a care leaver who is, or may be, a victim of trafficking or is an unaccompanied asylum-seeking child (UASC), to give specific consideration to any needs arising as a result of that status; and
- To include a list of matters that a HSC Trust must take into account when considering whether accommodation for a care leaver is suitable.

3.2 Regulation 6 (Assessment of needs) and Regulation 10 (Support and accommodation) of the 2005 Regulations would require amendment to give effect to these policy proposals.

3.3 As these proposals were not included in the 2017 consultation on the Bill, we are now seeking your views on whether to proceed to include such provision in the 2005 Regulations, at the same time as we make the necessary consequential amendments, as outlined above.

4. Assessment of needs: children who are victims of trafficking or are unaccompanied asylum-seeking children

4.1 Regulation 6 of the 2005 Regulations sets out the matters to be taken into account by a Trust when carrying out an assessment of needs of an eligible child or a relevant child⁴ who does not already have a pathway plan. These include giving consideration to:

- the child's health and development;
- the child's need for education, training or employment;
- the child's need for care support and accommodation;
- the support available from members of the child's family and other persons;
- the child's financial needs; and
- the extent to which the child possesses the practical and other skills necessary for independent living.

4.2 These considerations are broadly similar to those specified in the Care Leavers (England) Regulations 2010. However, we note that, in 2014, the Department for Education (England) amended the 2010 Regulations to also include specific considerations where the relevant child is, or may be, a victim of trafficking or is an unaccompanied asylum-seeking child (UASC). Similar provision was inserted in the Care Planning, Placement and Case Review Regulations 2010 to cover assessments relating to eligible children.

4.3 These young people may have additional, specific needs arising not only from leaving care but also because of their status and background.

4.4 All child (under the age of 18) victims or potential victims of trafficking arriving in Northern Ireland have an entitlement to the support of an 'independent guardian' under section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015⁵ (and associated subordinate

⁴ "relevant child" has the same meaning as Article 34B(2) of the Children (Northern Ireland) Order 1995

⁵ <https://www.legislation.gov.uk/nia/2015/2/section/21>

legislation⁶). The work of the Independent Guardian Service (IGS) is specific to the support needs of its service users as unaccompanied and/or trafficked children/young people and is in addition to statutory social services which manage care placements and transitions.

- 4.5 Under the relevant regulations, social services – and other relevant agencies working with a UASC working with an independent guardian – are required to have “due regard” to the independent guardian’s work. However, this “due regard” is not specific to care leaving nor the transition to adulthood. An obligation on Trusts to consider an UASC’s needs as a result of their asylum status would strengthen the “due regard” required in the transition phase, should the UASC still be using the IGS as, in some cases, the IGS can continue to offer its services to individuals up to the age of 21. Such an obligation on a Trust would help provide continuity of support in the complicated, challenging transition phase of being discharged from the IGS and other relevant children’s services.
- 4.6 This transition phase to adulthood is a particularly complex process for UASC. As a result, there is a need to address the young person’s care needs in the context of wider asylum and immigration issues – needs which may change over time. Pathway planning to support an UASC’s transition to adulthood should cover all areas that would be addressed within all young people’s plans as well as any additional needs arising from their specific immigration issues.
- 4.7 In addition, care leavers who were child victims or potential child victims of human trafficking may remain vulnerable to their traffickers and exploiters and a range of other risks and challenges and therefore, it is essential that service provision recognises the potential need for very specific ongoing support. Their continued vulnerability and potential need for ongoing support to address trauma they have experienced, should inform support plans and packages to assist them and promote their independence in adult life. It is critical that consideration is given by all agencies and practitioners, commensurate with their roles and

⁶ <https://www.legislation.gov.uk/nisr/2016/410/contents>

responsibilities, to the young person's continuing need for protection and support as the young person makes the transition into adult life.

4.8 We are therefore proposing to amend the 2005 Regulations to place a duty on Trusts, where the eligible or relevant child is:

- a victim, or there is reason to believe the child may be a victim, of trafficking in human beings within the meaning of the Council of Europe Convention on Action against Trafficking in Human Beings; or
- an unaccompanied asylum-seeking child within the meaning of the Immigration Rules and has applied, or has indicated to the responsible authority an intention to apply, for asylum and has not been granted indefinite leave to remain,

to take into account the child's needs as a result of that status when carrying out an assessment of needs.

4.9 Given the rising number of children who fall into these categories, we consider it is important to insert such provision into the regulations in order to highlight that these young people have very specific needs and to ensure that Trusts take account of these when undertaking assessments for care leaver support.

Question 1

Do you agree that we should amend regulation 6 of the Children (Leaving Care) Regulations (Northern Ireland) 2005 to place a duty on an authority, when carrying out an assessment of needs in respect of an eligible or relevant child, to take into account any needs the child may have as a result of being:

- a victim, or suspected victim, of trafficking in human beings; or
- an unaccompanied asylum-seeking child who has applied, or intends to apply, for asylum and has not been granted indefinite leave to remain.

If not, please explain.

5. Suitable accommodation: matters to be considered

- 5.1 Article 34C(8) of the Children Order provides that the responsible authority shall safeguard and promote the welfare of each relevant child and, unless satisfied that his welfare does not require it, support a relevant child by maintaining them; providing them with, or maintaining them in, suitable accommodation and providing other prescribed support.
- 5.2 Article 34C(10) of the Children Order enables the Department to define in regulations “suitable accommodation” and make provision about the suitability of landlords and other providers of accommodation.
- 5.3 Regulation 10 of the 2005 Regulations defines “suitable accommodation” as meaning accommodation –
- a) which is so far as reasonably practicable is suitable for the relevant child in the light of his needs, including his health needs and any needs arising from any disability;
 - b) in respect of which the responsible authority has satisfied itself as to the character and suitability of the landlord or other provider; and
 - c) in respect of which the responsible authority has, so far as reasonably practicable, taken into account the child’s wishes and feelings and educational, training or employment needs.
- 5.4 We are proposing to amend the 2005 Regulations to include a list of matters that a Trust must take into account when considering whether accommodation is suitable. These would include, in respect of the accommodation, the:
- Facilities and services provided;
 - State of repair;
 - Safety;
 - Location;
 - Support;
 - Tenancy issues; and the financial commitments involved for the relevant child and their affordability.

5.5 In respect of the relevant child, we also consider that the Trust should take into consideration:

- the views of the relevant child in respect of the accommodation;
- their understanding of their rights and responsibilities in relation to the accommodation; and
- their understanding of the funding arrangements.

5.6 The minimum standards for Leaving and Aftercare Services, Standard 5, requires that every young person lives in suitable, affordable accommodation and is able to keep themselves safe. Young people leaving care are a diverse group whose needs for accommodation are likely to vary widely. The type and standard of accommodation required, its location including proximity to established community links and the degree of support needed are all key factors that need to be considered to ensure an effective and successful transition from care to independence and adulthood.

5.7 The inclusion in amended Regulations of the list of matters that Trusts must consider in determining whether accommodation is suitable will help to reinforce compliance with existing standards and ensure that accommodation for relevant children is appropriate to their specific needs.

Question 2

Do you agree that we should amend regulation 10 of the Children (Leaving Care) Regulations (NI) 2005 to include a list of matters that a Trust must take into account when considering whether accommodation is suitable?

Do you consider that the list of matters set out in paragraphs 5.4 and 5.5 above is sufficient or are there any other matters that should be included?

6. Assessment of Impact

Equality Implications

6.1 In accordance with guidance produced by the Equality Commission for Northern Ireland and in keeping with section 75 of the Northern Ireland Act 1998, the policy proposals were screened for equality impact and the Department of Health has concluded that a full Equality Impact Assessment is not required.

Human Rights

6.2 Consideration has been given to the human rights implications of these policy proposals. They are considered compatible with section 24 of the Northern Ireland Act 1998.

Data Protection Impact Assessment

6.3 A data protection screening has been carried out and the Department of Health has concluded that a full Data Protection Impact Assessment is not required.

Regulatory Impact Assessment

6.4 The Department has conducted an initial screening and considers that a regulatory impact assessment is not appropriate. The amendments to the Children (Leaving Care) Regulations 2005 will not impose any additional costs to charities, social economy enterprises or the voluntary sector.

Rural Impact Assessment

6.5 A rural impact assessment has been carried out. This noted that the Regulations would impact equally on adoptive families and related persons regardless of where they live in Northern Ireland.

7. Arrangements for consultation

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team by email at: adoption@health-ni.gov.uk or by telephone on (028) 9050221.

Additional copies

Additional copies are available electronically and can be downloaded from <https://www.health-ni.gov.uk/consultations>

A version of this consultation document has been designed for children and young people and will also be published on the website.

You can reply to this consultation, using the template provided, via email to adoption@health-ni.gov.uk or alternatively by post to:

Adoption and Children Act Implementation Team
Family and Children's Policy Directorate
Department of Health
Room A3.3
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

The consultation will close on **19th January 2023**. Responses received after this date will only be considered in exceptional circumstances and with prior agreement from the Department.

Following this consultation, the Department will produce an analysis of the responses and the report will be published on the Department's website. The Regulations will be drafted in due course.

Privacy, Confidentiality and Access to Consultation Responses

For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice (below).

Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (UK GDPR) (EU) 2016/679.

If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

Privacy Notice – Consultations (DoH)

Data Controller Name: Department of Health (DoH)
Address: Castle Buildings, Stormont, BELFAST, BT4 3SG
Email: adoption@health-ni.gov.uk
Telephone: 028 90532337

Data Protection Officer Name: Charlene McQuillan
Telephone: 028 90522353
Email: DPO@health-ni.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the [Data Protection Act \(DPA\)](#) and the [UK General Data Protection Regulation](#) (UK GDPR). The Department of Health (DoH) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

Purpose for processing

We will process personal data provided in response to consultations for the purpose of informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We will publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1)(e) of the UK GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2)(g) of the UK GDPR, in the exercise of the function of the department, and to monitor equality.

How will your information be used and shared

We process the information internally for the above stated purpose. We don't intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance the provisions of the data protection laws.

How long will we keep your information

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule [Good Management, Good Records](#) (GMGR).

What are your rights?

- You have the right to obtain confirmation that your data is being [processed, and access to your personal data](#)
- You are entitled to have personal data [rectified if it is inaccurate or incomplete](#)
- You have a right to have personal data [erased and to prevent processing](#), in specific circumstances
- You have the right [to 'block' or suppress processing](#) of personal data, in specific circumstances
- You have the right to [data portability](#), in specific circumstances
- **You have the right to** [object to the processing](#), in specific circumstances
- **You have rights in relation to** [automated decision making and profiling](#).

How to complain if you are not happy with how we process your personal information

If you wish to request access, object or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

casework@ico.org.uk