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22 November 2022

Dear Conveners,

**HEALTH AND CARE ACT 2022 (FURTHER CONSEQUENTIAL AMENDMENTS)
REGULATIONS 2022**

I write to inform the Scottish Parliament about changes to legislation which will mean that as of 18 November anyone convicted of Virginity Testing or Hymenoplasty offences will be disqualified from adopting or fostering in Scotland.

[The Health and Care Act 2022](#) (“the 2022 Act”) made Virginity Testing and Hymenoplasty criminal offences. The Scottish Parliament agreed a Legislative Consent Motion and these offences came into force in Scotland from 1 July 2022

Subsequently, the Health and Care Act (Further Consequential Amendments) Regulations 2022 (“the 2022 Regulations”) were made and came into force on 18 November. Regulation 3 of those Regulations add offences under the 2022 Act in relation to Virginity Testing or Hymenoplasty to the list of offences which could disqualify someone from becoming a foster carer or an adopter.

In 2018, the World Health Organisation, UN Women and the Office of the UN High Commissioner for Human Rights stated that these practices are a violation of human rights which can have immediate and long-term consequences for women and girls’ physical, psychological and social well-being. The new legislative changes reflect the Scottish Government’s continued commitment to reduce violence against women and girls.

The inclusion of the 2022 Act offences in section 7(1) of the Foster Children (Scotland) Act 1984, will mean that they will be relevant to assessments of suitability in relation to fostering, and will also by virtue of the Adoption Agencies (Scotland) Regulations 2009 (schedule 1, Part 1, paragraph 14)) be relevant to such assessments in relation to adoption.

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Additionally, on October 24, The Police Act 1997 (Offences in Schedules 8A and 8B) Amendment (Scotland) Regulations 2022 were laid in Scottish Parliament. If these regulations are passed through Parliament, the regulations would mean that, in addition to unspent convictions, spent convictions relating to virginity and hymenoplasty will appear on enhanced disclosure checks.

In summary, regulation 3 will have the effect of disqualifying or enabling the disqualification of individuals convicted of virginity testing or hymenoplasty offences, from fostering or adopting children in Scotland.

The new offences have been extended across the United Kingdom to criminalise the practice across all four nations and present a unified stance on the issue. This approach also ensures that Scotland does not become a “safe haven” for virginity testing or hymenoplasty had the new offences extended only to England and Wales.. The further consequential amendments which are coming into force on 18 November will allow for a continued unified approach across the United Kingdom on virginity testing and hymenoplasty.

Finally, the Scottish Government will also write to all stakeholders in the adoption and fostering sectors to make them aware of the changes. This will include local authorities, independent and voluntary fostering and adoption agencies, the Care Inspectorate, Social Work Scotland and key third sector stakeholders.

I hope this is helpful.

Clare Haughey

CLARE HAUGHEY

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