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Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Adoption and Children Act 2002

2002 CHAPTER 38

An Act to restate and amend the law relating to adoption; to make further amendments of the law relating to children; to amend section 93 of the Local Government Act 2000; and for connected purposes. [7th November 2002]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

ADOPTION

VALID FROM 30/12/2005

CHAPTER 1

INTRODUCTORY

1 Considerations applying to the exercise of powers

(1) This section applies whenever a court or adoption agency is coming to a decision relating to the adoption of a child.

(2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.

(3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.

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(4) The court or adoption agency must have regard to the following matters (among others)—

(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),

(b) the child's particular needs,

(c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,

(d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

(e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

(5) In placing the child for adoption, the adoption agency must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

(6) The court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

(7) In this section, "coming to a decision relating to the adoption of a child", in relation to a court, includes—

(a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a placement order (or the revocation of such an order) or an order under section 26 (or the revocation or variation of such an order),

(b) 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 Act,

but does not include coming to a decision about granting leave in any other circumstances.

(8) For the purposes of this section—

(a) references to relationships are not confined to legal relationships,

(b) references to a relative, in relation to a child, include the child's mother and father.

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CHAPTER 2

THE ADOPTION SERVICE

The Adoption Service

2 Basic definitions

(1) The services maintained by local authorities under section 3(1) may be collectively referred to as "the Adoption Service", and a local authority or registered adoption society may be referred to as an adoption agency.

(2) In this Act, "registered adoption society" means a voluntary organisation which is an adoption society registered under Part 2 of the Care Standards Act 2000 (c. 14); but in relation to the provision of any facility of the Adoption Service, references to a registered adoption society or to an adoption agency do not include an adoption society which is not registered in respect of that facility.

(3) A registered adoption society is to be treated as registered in respect of any facility of the Adoption Service unless it is a condition of its registration that it does not provide that facility.

(4) No application for registration under Part 2 of the Care Standards Act 2000 may be made in respect of an adoption society which is an unincorporated body.

(5) In this Act—

"the 1989 Act" means the Children Act 1989 (c. 41),

"adoption society" means a body whose functions consist of or include making arrangements for the adoption of children,

"voluntary organisation" means a body other than a public or local authority the activities of which are not carried on for profit.

(6) In this Act, "adoption support services" means—

(a) counselling, advice and information, and

(b) any other services prescribed by regulations,

in relation to adoption.

(7) The power to make regulations under subsection (6)(b) is to be exercised so as to secure that local authorities provide financial support.

(8) In this Chapter, references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.

Commencement Information

I1 S. 2(6)(7)(8) in force at 10.3.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(2)(b)**

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VALID FROM 07/12/2004

3 Maintenance of Adoption Service

(1) Each local authority must continue to maintain within their area a service designed to meet the needs, in relation to adoption, of—
  (a) children who may be adopted, their parents and guardians,
  (b) persons wishing to adopt a child, and
  (c) adopted persons, their parents, natural parents and former guardians;
  and for that purpose must provide the requisite facilities.

(2) Those facilities must include making, and participating in, arrangements—
  (a) for the adoption of children, and
  (b) for the provision of adoption support services.

(3) As part of the service, the arrangements made for the purposes of subsection (2)(b)—
  (a) must extend to the provision of adoption support services to persons who are within a description prescribed by regulations,
  (b) may extend to the provision of those services to other persons.

(4) A local authority may provide any of the requisite facilities by securing their provision by—
  (a) registered adoption societies, or
  (b) other persons who are within a description prescribed by regulations of persons who may provide the facilities in question.

(5) The facilities of the service must be provided in conjunction with the local authority's other social services and with registered adoption societies in their area, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.

(6) The social services referred to in subsection (5) are the functions of a local authority which are social services functions within the meaning of the Local Authority Social Services Act 1970 (c. 42) (which include, in particular, those functions in so far as they relate to children).

4 Assessments etc. for adoption support services

(1) A local authority must at the request of—
  (a) any of the persons mentioned in paragraphs (a) to (c) of section 3(1), or
  (b) any other person who falls within a description prescribed by regulations (subject to subsection (7)(a)),
  carry out an assessment of that person's needs for adoption support services.

(2) A local authority may, at the request of any person, carry out an assessment of that person's needs for adoption support services.

(3) A local authority may request the help of the persons mentioned in paragraph (a) or (b) of section 3(4) in carrying out an assessment.

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(4) Where, as a result of an assessment, a local authority decide that a person has needs for adoption support services, they must then decide whether to provide any such services to that person.

(5) If—

(a) a local authority decide to provide any adoption support services to a person, and

(b) the circumstances fall within a description prescribed by regulations,

the local authority must prepare a plan in accordance with which adoption support services are to be provided to the person and keep the plan under review.

(6) Regulations may make provision about assessments, preparing and reviewing plans, the provision of adoption support services in accordance with plans and reviewing the provision of adoption support services.

(7) The regulations may in particular make provision—

(a) as to the circumstances in which a person mentioned in paragraph (b) of subsection (1) is to have a right to request an assessment of his needs in accordance with that subsection,

(b) about the type of assessment which, or the way in which an assessment, is to be carried out,

(c) about the way in which a plan is to be prepared,

(d) about the way in which, and time at which, a plan or the provision of adoption support services is to be reviewed,

(e) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan,

(f) as to the circumstances in which a local authority may provide adoption support services subject to conditions,

(g) as to the consequences of conditions imposed by virtue of paragraph (f) not being met (including the recovery of any financial support provided by a local authority),

(h) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority's area,

(i) as to the circumstances in which a local authority may recover from another local authority the expenses of providing adoption support services to any person.

(8) A local authority may carry out an assessment of the needs of any person under this section at the same time as an assessment of his needs is made under any other enactment.

(9) If at any time during the assessment of the needs of any person under this section, it appears to a local authority that—

(a) there may be a need for the provision of services to that person by a Primary Care Trust (in Wales, a Health Authority or Local Health Board), or

(b) there may be a need for the provision to him of any services which fall within the functions of a local education authority (within the meaning of the Education Act 1996 (c. 56)),

the local authority must notify that Primary Care Trust, Health Authority, Local Health Board or local education authority.

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(10) Where it appears to a local authority that another local authority could, by taking any specified action, help in the exercise of any of their functions under this section, they may request the help of that other local authority, specifying the action in question.

(11) A local authority whose help is so requested must comply with the request if it is consistent with the exercise of their functions.

Commencement Information

I2 S. 4(6)(7)(b)-(i) in force at 10.3.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(2)(b)**

PROSPECTIVE

[F1]5 Local authority plans for adoption services

. . . . . .

Textual Amendments

F1 S. 5 repealed (1.3.2005 for E., 1.4.2006 for W.) by Children Act 2004 (c. 31), **Sch. 5 Pt. 1**; S.I. 2005/394, art. 2(1)(l); S.I. 2006/885, art. 2(h)

VALID FROM 30/12/2005

6 Arrangements on cancellation of registration

Where, by virtue of the cancellation of its registration under Part 2 of the Care Standards Act 2000 (c. 14), a body has ceased to be a registered adoption society, the appropriate Minister may direct the body to make such arrangements as to the transfer of its functions relating to children and other transitional matters as seem to him expedient.

VALID FROM 30/12/2005

7 Inactive or defunct adoption societies etc.

(1) This section applies where it appears to the appropriate Minister that—

(a) a body which is or has been a registered adoption society is inactive or defunct, or

(b) a body which has ceased to be a registered adoption society by virtue of the cancellation of its registration under Part 2 of the Care Standards Act 2000 has not made such arrangements for the transfer of its functions relating to children as are specified in a direction given by him.

(2) The appropriate Minister may, in relation to such functions of the society as relate to children, direct what appears to him to be the appropriate local authority to take

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any such action as might have been taken by the society or by the society jointly with the authority.

(3) A local authority are entitled to take any action which—

(a) apart from this subsection the authority would not be entitled to take, or would not be entitled to take without joining the society in the action, but

(b) they are directed to take under subsection (2).

(4) The appropriate Minister may charge the society for expenses necessarily incurred by him or on his behalf in securing the transfer of its functions relating to children.

(5) Before giving a direction under subsection (2) the appropriate Minister must, if practicable, consult both the society and the authority.

VALID FROM 30/12/2005

8 Adoption support agencies

(1) In this Act, "adoption support agency" means an undertaking the purpose of which, or one of the purposes of which, is the provision of adoption support services; but an undertaking is not an adoption support agency—

(a) merely because it provides information in connection with adoption other than for the purpose mentioned in section 98(1), or

(b) if it is excepted by virtue of subsection (2).

"Undertaking" has the same meaning as in the Care Standards Act 2000 (c. 14).

(2) The following are excepted—

(a) a registered adoption society, whether or not the society is registered in respect of the provision of adoption support services,

(b) a local authority,

(c) a local education authority (within the meaning of the Education Act 1996 (c. 56)),

(d) a Special Health Authority, Primary Care Trust (in Wales, a Health Authority or Local Health Board) **[**[F2], NHS trust or NHS foundation trust**]**,

(e) the Registrar General,

(f) any person, or description of persons, excepted by regulations.

(3) In section 4 of the Care Standards Act 2000 (basic definitions)—

(a) after subsection (7) there is inserted—

"(7A) "Adoption support agency" has the meaning given by section 8 of the Adoption and Children Act 2002.",

(b) in subsection (9)(a) (construction of references to descriptions of agencies), for "or a voluntary adoption agency" there is substituted " a voluntary adoption agency or an adoption support agency ".

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Textual Amendments

F2 Words in s. 8(2)(d) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 4 para. 126**; S.I. 2004/759, art. 2

VALID FROM 07/02/2004

Regulations

9 General power to regulate adoption etc. agencies

(1) Regulations may make provision for any purpose relating to—
- (a) the exercise by local authorities or voluntary adoption agencies of their functions in relation to adoption, or
- (b) the exercise by adoption support agencies of their functions in relation to adoption.

(2) The extent of the power to make regulations under this section is not limited by sections 10 to 12, 45, 54, 56 to 65 and 98 or by any other powers exercisable in respect of local authorities, voluntary adoption agencies or adoption support agencies.

(3) Regulations may provide that a person who contravenes or fails to comply with any provision of regulations under this section is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In this section and section 10, "voluntary adoption agency" means a voluntary organisation which is an adoption society.

10 Management etc. of agencies

(1) In relation to local authorities, voluntary adoption agencies and adoption support agencies, regulations under section 9 may make provision as to—
- (a) the persons who are fit to work for them for the purposes of the functions mentioned in section 9(1),
- (b) the fitness of premises,
- (c) the management and control of their operations,
- (d) the number of persons, or persons of any particular type, working for the purposes of those functions,
- (e) the management and training of persons working for the purposes of those functions,
- (f) the keeping of information.

(2) Regulations made by virtue of subsection (1)(a) may, in particular, make provision for prohibiting persons from working in prescribed positions unless they are registered in, or in a particular part of, one of the registers maintained under section 56(1) of the Care Standards Act 2000 (c. 14) (registration of social care workers).

(3) In relation to voluntary adoption agencies and adoption support agencies, regulations under section 9 may—

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(a) make provision as to the persons who are fit to manage an agency, including provision prohibiting persons from doing so unless they are registered in, or in a particular part of, one of the registers referred to in subsection (2),
(b) impose requirements as to the financial position of an agency,
(c) make provision requiring the appointment of a manager,
(d) in the case of a voluntary adoption agency, make provision for securing the welfare of children placed by the agency, including provision as to the promotion and protection of their health,
(e) in the case of an adoption support agency, make provision as to the persons who are fit to carry on the agency.

(4) Regulations under section 9 may make provision as to the conduct of voluntary adoption agencies and adoption support agencies, and may in particular make provision—
(a) as to the facilities and services to be provided by an agency,
(b) as to the keeping of accounts,
(c) as to the notification to the registration authority of events occurring in premises used for the purposes of an agency,
(d) as to the giving of notice to the registration authority of periods during which the manager of an agency proposes to be absent, and specifying the information to be given in such a notice,
(e) as to the making of adequate arrangements for the running of an agency during a period when its manager is absent,
(f) as to the giving of notice to the registration authority of any intended change in the identity of the manager,
(g) as to the giving of notice to the registration authority of changes in the ownership of an agency or the identity of its officers,
(h) requiring the payment of a prescribed fee to the registration authority in respect of any notification required to be made by virtue of paragraph (g),
(i) requiring arrangements to be made for dealing with complaints made by or on behalf of those seeking, or receiving, any of the services provided by an agency and requiring the agency or manager to take steps for publicising the arrangements.

11 Fees

(1) Regulations under section 9 may prescribe—
(a) the fees which may be charged by adoption agencies in respect of the provision of services to persons providing facilities as part of the Adoption Service (including the Adoption Services in Scotland and Northern Ireland),
(b) the fees which may be paid by adoption agencies to persons providing or assisting in providing such facilities.

(2) Regulations under section 9 may prescribe the fees which may be charged by local authorities in respect of the provision of prescribed facilities of the Adoption Service where the following conditions are met.

(3) The conditions are that the facilities are provided in connection with—
(a) the adoption of a child brought into the United Kingdom for the purpose of adoption, or

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(b) a Convention adoption, an overseas adoption or an adoption effected under the law of a country or territory outside the British Islands.

(4) Regulations under section 9 may prescribe the fees which may be charged by adoption agencies in respect of the provision of counselling, where the counselling is provided in connection with the disclosure of information in relation to a person's adoption.

12 Independent review of determinations

(1) Regulations under section 9 may establish a procedure under which any person in respect of whom a qualifying determination has been made by an adoption agency may apply to a panel constituted by the appropriate Minister for a review of that determination.

(2) The regulations must make provision as to the description of determinations which are qualifying determinations for the purposes of subsection (1).

(3) The regulations may include provision as to—

(a) the duties and powers of a panel (including the power to recover the costs of a review from the adoption agency by which the determination reviewed was made),

(b) the administration and procedures of a panel,

(c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment),

(d) the payment of expenses of members of a panel,

(e) the duties of adoption agencies in connection with reviews conducted under the regulations,

(f) the monitoring of any such reviews.

(4) The appropriate Minister may make an arrangement with an organisation under which functions in relation to the panel are performed by the organisation on his behalf.

(5) If the appropriate Minister makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by the appropriate Minister.

(6) The arrangement may include provision for payments to be made to the organisation by the appropriate Minister.

(7) Where the appropriate Minister is the Assembly, subsections (4) and (6) also apply as if references to an organisation included references to the Secretary of State.

(8) In this section, "organisation" includes a public body and a private or voluntary organisation.

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Supplemental

VALID FROM 30/12/2005

13 Information concerning adoption

(1) Each adoption agency must give to the appropriate Minister any statistical or other general information he requires about—
  (a) its performance of all or any of its functions relating to adoption,
  (b) the children and other persons in relation to whom it has exercised those functions.

(2) The following persons—
  (a) the **[**[F3]designated officer**]** for each magistrates' court,
  (b) the relevant officer of each county court,
  (c) the relevant officer of the High Court,

  must give to the appropriate Minister any statistical or other general information he requires about the proceedings under this Act of the court in question.

(3) In subsection (2), "relevant officer", in relation to a county court or the High Court, means the officer of that court who is designated to act for the purposes of that subsection by a direction given by the Lord Chancellor.

(4) The information required to be given to the appropriate Minister under this section must be given at the times, and in the form, directed by him.

(5) The appropriate Minister may publish from time to time abstracts of the information given to him under this section.

Textual Amendments

F3 Words in s. 13(2) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 411**; S.I. 2005/910, art. 3(y)

VALID FROM 30/12/2005

14 Default power of appropriate Minister

(1) If the appropriate Minister is satisfied that any local authority have failed, without reasonable excuse, to comply with any of the duties imposed on them by virtue of this Act or of section 1 or 2(4) of the Adoption (Intercountry Aspects) Act 1999 (c. 18), he may make an order declaring that authority to be in default in respect of that duty.

(2) An order under subsection (1) must give the appropriate Minister's reasons for making it.

(3) An order under subsection (1) may contain such directions as appear to the appropriate Minister to be necessary for the purpose of ensuring that, within the period specified in the order, the duty is complied with.

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(4) Any such directions are enforceable, on the appropriate Minister's application, by a mandatory order.

VALID FROM 30/12/2005

15 Inspection of premises etc.

(1) The appropriate Minister may arrange for any premises in which—
  (a) a child is living with a person with whom the child has been placed by an adoption agency, or
  (b) a child in respect of whom a notice of intention to adopt has been given under section 44 is, or will be, living,

to be inspected from time to time.

(2) The appropriate Minister may require an adoption agency—
  (a) to give him any information, or
  (b) to allow him to inspect any records (in whatever form they are held),

relating to the discharge of any of its functions in relation to adoption which the appropriate Minister specifies.

(3) An inspection under this section must be conducted by a person authorised by the appropriate Minister.

(4) An officer of a local authority may only be so authorised with the consent of the authority.

(5) A person inspecting any premises under subsection (1) may—
  (a) visit the child there,
  (b) make any examination into the state of the premises and the treatment of the child there which he thinks fit.

(6) A person authorised to inspect any records under this section may at any reasonable time have access to, and inspect and check the operation of, any computer (and associated apparatus) which is being or has been used in connection with the records in question.

(7) A person authorised to inspect any premises or records under this section may—
  (a) enter the premises for that purpose at any reasonable time,
  (b) require any person to give him any reasonable assistance he may require.

(8) A person exercising a power under this section must, if required to do so, produce a duly authenticated document showing his authority.

(9) Any person who intentionally obstructs another in the exercise of a power under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

16 Distribution of functions in relation to registered adoption societies

After section 36 of the Care Standards Act 2000 (c. 14) there is inserted—

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"36A Voluntary adoption agencies: distribution of functions

(1) This section applies to functions relating to voluntary adoption agencies conferred on the registration authority by or under this Part or under Chapter 2 of Part 1 of the Adoption and Children Act 2002.

(2) Subject to the following provisions, functions to which this section applies are exercisable—

(a) where the principal office of an agency is in England, by the Commission,

(b) where the principal office of an agency is in Wales, by the Assembly.

(3) So far as those functions relate to the imposition, variation or removal of conditions of registration, they may only be exercised after consultation with the Assembly or (as the case may be) the Commission.

(4) But—

(a) where such a function as is mentioned in subsection (3) is exercisable by the Commission in relation to an agency which has a branch in Wales, it is exercisable only with the agreement of the Assembly,

(b) where such a function as is mentioned in subsection (3) is exercisable by the Assembly in relation to an agency which has a branch in England, it is exercisable only with the agreement of the Commission.

(5) The functions conferred on the registration authority by sections 31 and 32 of this Act in respect of any premises of a voluntary adoption agency are exercisable—

(a) where the premises are in England, by the Commission

(b) where the premises are in Wales, by the Assembly.

(6) In spite of subsections (2) to (5), regulations may provide for any function to which this section applies to be exercisable by the Commission instead of the Assembly, or by the Assembly instead of the Commission, or by one concurrently with the other, or by both jointly or by either with the agreement of or after consultation with the other.

(7) In this section, "regulations" means regulations relating to England and Wales."

Commencement Information

I3 S. 16 in force at 1.2.2003 for W. by S.I. 2003/181, **art. 2**

I4 S. 16 in force at 25.2.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(1)(a)**

PROSPECTIVE

[F4]17 Inquiries

. . . . . .

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Textual Amendments

F4 S. 17 repealed (7.6.2005) by Inquiries Act 2005 (c. 12), s. 51(1), Sch. 2 para. 23, **Sch. 3** (with ss. 44, 50); S.I. 2005/1432, art. 2

VALID FROM 07/02/2004

CHAPTER 3

PLACEMENT FOR ADOPTION AND ADOPTION ORDERS

Placement of children by adoption agency for adoption

VALID FROM 30/12/2005

18 Placement for adoption by agencies

(1) An adoption agency may—

(a) place a child for adoption with prospective adopters, or

(b) where it has placed a child with any persons (whether under this Part or not), leave the child with them as prospective adopters,

but, except in the case of a child who is less than six weeks old, may only do so under section 19 or a placement order.

(2) An adoption agency may only place a child for adoption with prospective adopters if the agency is satisfied that the child ought to be placed for adoption.

(3) A child who is placed or authorised to be placed for adoption with prospective adopters by a local authority is looked after by the authority.

(4) If an application for an adoption order has been made by any persons in respect of a child and has not been disposed of—

(a) an adoption agency which placed the child with those persons may leave the child with them until the application is disposed of, but

(b) apart from that, the child may not be placed for adoption with any prospective adopters.

"Adoption order" includes a Scottish or Northern Irish adoption order.

(5) References in this Act (apart from this section) to an adoption agency placing a child for adoption—

(a) are to its placing a child for adoption with prospective adopters, and

(b) include, where it has placed a child with any persons (whether under this Act or not), leaving the child with them as prospective adopters;

and references in this Act (apart from this section) to a child who is placed for adoption by an adoption agency are to be interpreted accordingly.

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(6) References in this Chapter to an adoption agency being, or not being, authorised to place a child for adoption are to the agency being or (as the case may be) not being authorised to do so under section 19 or a placement order.

(7) This section is subject to sections 30 to 35 (removal of children placed by adoption agencies).

VALID FROM 30/12/2005

19 Placing children with parental consent

(1) Where an adoption agency is satisfied that each parent or guardian of a child has consented to the child—
   (a) being placed for adoption with prospective adopters identified in the consent, or
   (b) being placed for adoption with any prospective adopters who may be chosen by the agency,

   and has not withdrawn the consent, the agency is authorised to place the child for adoption accordingly.

(2) Consent to a child being placed for adoption with prospective adopters identified in the consent may be combined with consent to the child subsequently being 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.

(3) Subsection (1) does not apply where–
   (a) an application has been made on which a care order might be made and the application has not been disposed of, or
   (b) a care order or placement order has been made after the consent was given.

(4) References in this Act to a child placed for adoption under this section include a child who was placed under this section with prospective adopters and continues to be placed with them, whether or not consent to the placement has been withdrawn.

(5) This section is subject to section 52 (parental etc. consent).

VALID FROM 30/12/2005

20 Advance consent to adoption

(1) A parent or guardian of a child who consents to the child being placed for adoption by an adoption agency under section 19 may, at the same or any subsequent time, consent to the making of a future adoption order.

(2) Consent under this section—
   (a) where the parent or guardian has consented to the child being placed for adoption with prospective adopters identified in the consent, may be consent to adoption by them, or

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(b) may be consent to adoption by any prospective adopters who may be chosen by the agency.

(3) A person may withdraw any consent given under this section.

(4) A person who gives consent under this section may, at the same or any subsequent time, by notice given to the adoption agency—

(a) state that he does not wish to be informed of any application for an adoption order, or

(b) withdraw such a statement.

(5) A notice under subsection (4) has effect from the time when it is received by the adoption agency but has no effect if the person concerned has withdrawn his consent.

(6) This section is subject to section 52 (parental etc. consent).

Modifications etc. (not altering text)

C1 S. 20 restricted (prosp.) by 1978 (c. 28), s. 16 (3D) (b) (as inserted (prosp.) by Adoption and Children Act 2002 (c. 38), ss. 139, 148, **Sch. 3 para. 23(b)**) (with Sch. 4 paras. 6-8)

VALID FROM 30/12/2005

21 Placement orders

(1) A placement order is an order made by the court authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority.

(2) The court may not make a placement order in respect of a child unless—

(a) the child is subject to a care order,

(b) the court is satisfied that the conditions in section 31(2) of the 1989 Act (conditions for making a care order) are met, or

(c) the child has no parent or guardian.

(3) The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied—

(a) that the parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn the consent, or

(b) that the parent's or guardian's consent should be dispensed with.

This subsection is subject to section 52 (parental etc. consent).

(4) A placement order continues in force until—

(a) it is revoked under section 24,

(b) an adoption order is made in respect of the child, or

(c) the child marries or attains the age of 18 years.

"Adoption order" includes a Scottish or Northern Irish adoption order.

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Modifications etc. (not altering text)

C2 S. 21 restricted (prosp.) by 1978 (c.28), s.16(3D)(a)(ii) (as inserted (prosp.) by Adoption and Children Act 2002 (c. 38), ss. 139, 148, **Sch 3 para. 23(b)**) (with Sch. 4 paras. 6-8)

VALID FROM 30/12/2005

22 Applications for placement orders

(1) A local authority must apply to the court for a placement order in respect of a child if—

(a) the child is placed for adoption by them or is being provided with accommodation by them,

(b) no adoption agency is authorised to place the child for adoption,

(c) the child has no parent or guardian or the authority consider that the conditions in section 31(2) of the 1989 Act are met, and

(d) the authority are satisfied that the child ought to be placed for adoption.

(2) If—

(a) an application has been made (and has not been disposed of) on which a care order might be made in respect of a child, or

(b) a child is subject to a care order and the appropriate local authority are not authorised to place the child for adoption,

the appropriate local authority must apply to the court for a placement order if they are satisfied that the child ought to be placed for adoption.

(3) If—

(a) a child is subject to a care order, and

(b) the appropriate local authority are authorised to place the child for adoption under section 19,

the authority may apply to the court for a placement order.

(4) If a local authority—

(a) are under a duty to apply to the court for a placement order in respect of a child, or

(b) have applied for a placement order in respect of a child and the application has not been disposed of,

the child is looked after by the authority.

(5) Subsections (1) to (3) do not apply in respect of a child—

(a) if any persons have given notice of intention to adopt, unless the period of four months beginning with the giving of the notice has expired without them applying for an adoption order or their application for such an order has been withdrawn or refused, or

(b) if an application for an adoption order has been made and has not been disposed of.

"Adoption order" includes a Scottish or Northern Irish adoption order.

(6) Where—

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(a) an application for a placement order in respect of a child has been made and has not been disposed of, and

(b) no interim care order is in force,

the court may give any directions it considers appropriate for the medical or psychiatric examination or other assessment of the child; but a child who is of sufficient understanding to make an informed decision may refuse to submit to the examination or other assessment.

(7) The appropriate local authority—

(a) in relation to a care order, is the local authority in whose care the child is placed by the order, and

(b) in relation to an application on which a care order might be made, is the local authority which makes the application.

VALID FROM 30/12/2005

23 Varying placement orders

(1) The court may vary a placement order so as to substitute another local authority for the local authority authorised by the order to place the child for adoption.

(2) The variation may only be made on the joint application of both authorities.

VALID FROM 30/12/2005

24 Revoking placement orders

(1) The court may revoke a placement order on the application of any person.

(2) But an application may not be made by a person other than the child or the local authority authorised by the order to place the child for adoption unless—

(a) the court has given leave to apply, and

(b) the child is not placed for adoption by the authority.

(3) The court cannot give leave under subsection (2)(a) unless satisfied that there has been a change in circumstances since the order was made.

(4) If the court determines, on an application for an adoption order, not to make the order, it may revoke any placement order in respect of the child.

(5) Where—

(a) an application for the revocation of a placement order has been made and has not been disposed of, and

(b) the child is not placed for adoption by the authority,

the child may not without the court's leave be placed for adoption under the order.

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VALID FROM 30/12/2005

25 Parental responsibility

(1) This section applies while—

(a) a child is placed for adoption under section 19 or an adoption agency is authorised to place a child for adoption under that section, or

(b) a placement order is in force in respect of a child.

(2) Parental responsibility for the child is given to the agency concerned.

(3) While the child is placed with prospective adopters, parental responsibility is given to them.

(4) The agency may determine that the parental responsibility of any parent or guardian, or of prospective adopters, is to be restricted to the extent specified in the determination.

Modifications etc. (not altering text)

C3 S. 25 extended to S. (with mods) (prosp.) by 1978 (c. 28), s. 53B (as inserted by Adoption and Children Act 2002 (c. 38), **ss. 139**, 148 {Sch. 3 para. 30} (with Sch. 4 paras. 6-8)

VALID FROM 30/12/2005

26 Contact

(1) On an adoption agency being authorised to place a child for adoption, or placing a child for adoption who is less than six weeks old, any provision for contact under the 1989 Act ceases to have effect.

(2) While an adoption agency is so authorised or a child is placed for adoption—

(a) no application may be made for any provision for contact under that Act, but

(b) the court may make an order under this section 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 the person named in the order and the child otherwise to have contact with each other.

(3) An application for an order under this section may be made by—

(a) the child or the agency,

(b) any parent, guardian or relative,

(c) any person in whose favour there was provision for contact under the 1989 Act which ceased to have effect by virtue of subsection (1),

(d) if a residence order was in force immediately before the adoption agency was authorised to place the child for adoption or (as the case may be) placed the child for adoption at a time when he was less than six weeks old, the person in whose favour the order was made,

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(e) if a person had care of the child immediately before that time by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, that person,

(f) any person who has obtained the court's leave to make the application.

(4) When making a placement order, the court may on its own initiative make an order under this section.

(5) This section does not prevent an application for a contact order under section 8 of the 1989 Act being made where the application is to be heard together with an application for an adoption order in respect of the child.

(6) In this section, "provision for contact under the 1989 Act" means a contact order under section 8 of that Act or an order under section 34 of that Act (parental contact with children in care).

Modifications etc. (not altering text)

C4 S. 26 restricted (prosp.) by 1986 (c. 55) s. 2(2B) (as inserted by Adoption and Children Act 2002 (c. 38), **ss. 139**, 148 {Sch. 3 para. 48} (with Sch. 4 paras. 6-8)

27 Contact: supplementary

(1) An order under section 26—

(a) has effect while the adoption agency is authorised to place the child for adoption or the child is placed for adoption, but

(b) may be varied or revoked by the court on an application by the child, the agency or a person named in the order.

(2) The agency may refuse to allow the contact that would otherwise be required by virtue of an order under that section if—

(a) it is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare, and

(b) the refusal is decided upon as a matter of urgency and does not last for more than seven days.

(3) Regulations may make provision as to—

(a) the steps to be taken by an agency which has exercised its power under subsection (2),

(b) the circumstances in which, and conditions subject to which, the terms of any order under section 26 may be departed from by agreement between the agency and any person for whose contact with the child the order provides,

(c) notification by an agency of any variation or suspension of arrangements made (otherwise than under an order under that section) with a view to allowing any person contact with the child.

(4) Before making a placement order the court must—

(a) consider the arrangements which the adoption agency has made, or proposes to make, for allowing any person contact with the child, and

(b) invite the parties to the proceedings to comment on those arrangements.

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(5) An order under section 26 may provide for contact on any conditions the court considers appropriate.

VALID FROM 30/12/2005

28 Further consequences of placement

(1) Where a child is placed for adoption under section 19 or an adoption agency is authorised to place a child for adoption under that section—
  (a) a parent or guardian of the child may not apply for a residence order unless an application for an adoption order has been made and the parent or guardian has obtained the court's leave under subsection (3) or (5) of section 47,
  (b) if 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 court's leave under subsection (3) or (5) of that section.

(2) Where—
  (a) a child is placed for adoption under section 19 or an adoption agency is authorised to place a child for adoption under that section, or
  (b) a placement order is in force in respect of a child,

then (whether or not the child is in England and Wales) a person may not do either of the following things, unless the court gives leave or each parent or guardian of the child gives written consent.

(3) Those things are—
  (a) causing the child to be known by a new surname, or
  (b) removing the child from the United Kingdom.

(4) Subsection (3) does not prevent the removal of a child from the United Kingdom for a period of less than one month by a person who provides the child's home.

Modifications etc. (not altering text)

C5 S. 28(2)-(4) extended to S. (with mods) by 1978 (c. 28), s. 53B (as inserted by Adoption and Children Act 2002 (c. 38), **ss. 139**, 148 {Sch. 3 para. 30} (with Sch. 4 paras. 6-8)

C6 S. 28(2)-(4) extended to S. (with mods) by 1978 (c. 28), s. 53B (as inserted by Adoption and Children Act 2002 (c. 38), **ss. 139**, 148 {Sch. 3 para. 30} (with Sch. 4 paras. 6-8)

C7 S. 28(2)-(4) extended to S. (with mods) by 1978 (c. 28), s. 53B (as inserted by Adoption and Children Act 2002 (c. 38), **ss. 139**, 148 {Sch. 3 para. 30} (with Sch. 4 paras. 6-8)

VALID FROM 30/12/2005

29 Further consequences of placement orders

(1) Where a placement order is made in respect of a child and either—
  (a) the child is subject to a care order, or
  (b) the court at the same time makes a care order in respect of the child,

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the care order does not have effect at any time when the placement order is in force.

(2) On the making of a placement order in respect of a child, any order mentioned in section 8(1) of the 1989 Act, and any supervision order in respect of the child, ceases to have effect.

(3) Where a placement order is in force—
- (a) no prohibited steps order, residence order or specific issue order, and
- (b) no supervision order or child assessment order,

may be made in respect of the child.

(4) Subsection (3)(a) does not apply in respect of a residence order if—
- (a) an application for an adoption order has been made in respect of the child, and
- (b) the residence order is applied for by a parent or guardian who has obtained the court's leave under subsection (3) or (5) of section 47 or by any other person who has obtained the court's leave under this subsection.

(5) Where a placement order is in force, no special guardianship order may be made in respect of the child unless—
- (a) an application has been made for an adoption order, and
- (b) the person applying for the special guardianship order has obtained the court's leave under this subsection or, if he is a guardian of the child, has obtained the court's leave under section 47(5).

(6) Section 14A(7) of the 1989 Act applies in respect of an application for a special guardianship order for which leave has been given as mentioned in subsection (5)(b) with the omission of the words "the beginning of the period of three months ending with".

(7) Where a placement order is in force—
- (a) section 14C(1)(b) of the 1989 Act (special guardianship: parental responsibility) has effect subject to any determination under section 25(4) of this Act,
- (b) section 14C(3) and (4) of the 1989 Act (special guardianship: removal of child from UK etc.) does not apply.

VALID FROM 30/12/2005

Removal of children who are or may be placed by adoption agencies

30 General prohibitions on removal

(1) Where—
- (a) a child is placed for adoption by an adoption agency under section 19, or
- (b) a child is placed for adoption by an adoption agency and either the child is less than six weeks old or the agency has at no time been authorised to place the child for adoption,

a person (other than the agency) must not remove the child from the prospective adopters.

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(2) Where—

(a) a child who is not for the time being placed for adoption is being provided with accommodation by a local authority, and

(b) the authority have applied to the court for a placement order and the application has not been disposed of,

only a person who has the court's leave (or the authority) may remove the child from the accommodation.

(3) Where subsection (2) does not apply, but—

(a) a child who is not for the time being placed for adoption is being provided with accommodation by an adoption agency, and

(b) the agency is authorised to place the child for adoption under section 19 or would be so authorised if any consent to placement under that section had not been withdrawn,

a person (other than the agency) must not remove the child from the accommodation.

(4) This section is subject to sections 31 to 33 but those sections do not apply if the child is subject to a care order.

(5) This group of sections (that is, this section and those sections) apply whether or not the child in question is in England and Wales.

(6) This group of sections does not affect the exercise by any local authority or other person of any power conferred by any enactment, other than section 20(8) of the 1989 Act (removal of children from local authority accommodation).

(7) This group of sections does not prevent the removal of a child who is arrested.

(8) A person who removes a child in contravention of this section is guilty of an offence and liable 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.

31 Recovery by parent etc. where child not placed or is a baby

(1) Subsection (2) applies where—

(a) a child who is not for the time being placed for adoption is being provided with accommodation by an adoption agency, and

(b) the agency would be authorised to place the child for adoption under section 19 if consent to placement under that section had not been withdrawn.

(2) If any parent or guardian of the child informs the agency that he wishes the child to be returned to him, the agency must return the child to him within the period of seven days beginning with the request unless an application is, or has been, made for a placement order and the application has not been disposed of.

(3) Subsection (4) applies where—

(a) a child is placed for adoption by an adoption agency and either the child is less than six weeks old or the agency has at no time been authorised to place the child for adoption, and

(b) any parent or guardian of the child informs the agency that he wishes the child to be returned to him,

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unless an application is, or has been, made for a placement order and the application has not been disposed of.

(4) The agency must give notice of the parent's or guardian's wish to the prospective adopters who must return the child to the agency within the period of seven days beginning with the day on which the notice is given.

(5) A prospective adopter who fails to comply with subsection (4) is guilty of an offence and liable 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.

(6) As soon as a child is returned to an adoption agency under subsection (4), the agency must return the child to the parent or guardian in question.

32 Recovery by parent etc. where child placed and consent withdrawn

(1) This section applies where—

(a) a child is placed for adoption by an adoption agency under section 19, and

(b) consent to placement under that section has been withdrawn,

unless an application is, or has been, made for a placement order and the application has not been disposed of.

(2) If a parent or guardian of the child informs the agency that he wishes the child to be returned to him—

(a) the agency must give notice of the parent's or guardian's wish to the prospective adopters, and

(b) the prospective adopters must return the child to the agency within the period of 14 days beginning with the day on which the notice is given.

(3) A prospective adopter who fails to comply with subsection (2)(b) is guilty of an offence and liable 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.

(4) As soon as a child is returned to an adoption agency under this section, the agency must return the child to the parent or guardian in question.

(5) Where a notice under subsection (2) is given, but—

(a) before the notice was given, an application for an adoption order (including a Scottish or Northern Irish adoption order), special guardianship order or residence order, or for leave to apply for a special guardianship order or residence order, was made in respect of the child, and

(b) the application (and, in a case where leave is given on an application to apply for a special guardianship order or residence order, the application for the order) has not been disposed of,

the prospective adopters are not required by virtue of the notice to return the child to the agency unless the court so orders.

33 Recovery by parent etc. where child placed and placement order refused

(1) This section applies where—

(a) a child is placed for adoption by a local authority under section 19,

(b) the authority have applied for a placement order and the application has been refused, and

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(c) any parent or guardian of the child informs the authority that he wishes the child to be returned to him.

(2) The prospective adopters must return the child to the authority on a date determined by the court.

(3) A prospective adopter who fails to comply with subsection (2) is guilty of an offence and liable 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.

(4) As soon as a child is returned to the authority, they must return the child to the parent or guardian in question.

34 Placement orders: prohibition on removal

(1) Where a placement order in respect of a child—

(a) is in force, or

(b) has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by the local authority,

a person (other than the local authority) may not remove the child from the prospective adopters or from accommodation provided by the authority.

(2) A person who removes a child in contravention of subsection (1) is guilty of an offence.

(3) Where a court revoking a placement order in respect of a child determines that the child is not to remain with any former prospective adopters with whom the child is placed, they must return the child to the local authority within the period determined by the court for the purpose; and a person who fails to do so is guilty of an offence.

(4) Where a court revoking a placement order in respect of a child determines that the child is to be returned to a parent or guardian, the local authority must return the child to the parent or guardian as soon as the child is returned to the authority or, where the child is in accommodation provided by the authority, at once.

(5) A person guilty of an offence under this section is liable 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.

(6) This section does not affect the exercise by any local authority or other person of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

(7) This section does not prevent the removal of a child who is arrested.

(8) This section applies whether or not the child in question is in England and Wales.

35 Return of child in other cases

(1) Where a child is placed for adoption by an adoption agency and the prospective adopters give notice to the agency of their wish to return the child, the agency must—

(a) receive the child from the prospective adopters before the end of the period of seven days beginning with the giving of the notice, and

(b) give notice to any parent or guardian of the child of the prospective adopters' wish to return the child.

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(2) Where a child is placed for adoption by an adoption agency, and the agency—
  (a) is of the opinion that the child should not remain with the prospective adopters, and
  (b) gives notice to them of its opinion,

the prospective adopters must, not later than the end of the period of seven days beginning with the giving of the notice, return the child to the agency.

(3) If the agency gives notice under subsection (2)(b), it must give notice to any parent or guardian of the child of the obligation to return the child to the agency.

(4) A prospective adopter who fails to comply with subsection (2) is guilty of an offence and liable 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.

(5) Where—
  (a) an adoption agency gives notice under subsection (2) in respect of a child,
  (b) before the notice was given, an application for an adoption order (including a Scottish or Northern Irish adoption order), special guardianship order or residence order, or for leave to apply for a special guardianship order or residence order, was made in respect of the child, and
  (c) the application (and, in a case where leave is given on an application to apply for a special guardianship order or residence order, the application for the order) has not been disposed of,

prospective adopters are not required by virtue of the notice to return the child to the agency unless the court so orders.

(6) This section applies whether or not the child in question is in England and Wales.

VALID FROM 30/12/2005

Removal of children in non-agency cases

36 Restrictions on removal

(1) At any time when a child's home is with any persons ("the people concerned") with whom the child is not placed by an adoption agency, but the people concerned—
  (a) have applied for an adoption order in respect of the child and the application has not been disposed of,
  (b) have given notice of intention to adopt, or
  (c) have applied for leave to apply for an adoption order under section 42(6) and the application has not been disposed of,

a person may remove the child only in accordance with the provisions of this group of sections (that is, this section and sections 37 to 40).

The reference to a child placed by an adoption agency includes a child placed by a Scottish or Northern Irish adoption agency.

(2) For the purposes of this group of sections, a notice of intention to adopt is to be disregarded if—

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(a) the period of four months beginning with the giving of the notice has expired without the people concerned applying for an adoption order, or

(b) the notice is a second or subsequent notice of intention to adopt and was given during the period of five months beginning with the giving of the preceding notice.

(3) For the purposes of this group of sections, if the people concerned apply for leave to apply for an adoption order under section 42(6) and the leave is granted, the application for leave is not to be treated as disposed of until the period of three days beginning with the granting of the leave has expired.

(4) This section does not prevent the removal of a child who is arrested.

(5) Where a parent or guardian may remove a child from the people concerned in accordance with the provisions of this group of sections, the people concerned must at the request of the parent or guardian return the child to the parent or guardian at once.

(6) A person who—

(a) fails to comply with subsection (5), or

(b) removes a child in contravention of this section,

is guilty of an offence and liable 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.

(7) This group of sections applies whether or not the child in question is in England and Wales.

37 Applicants for adoption

If section 36(1)(a) applies, the following persons may remove the child—

(a) a person who has the court's leave,

(b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

38 Local authority foster parents

(1) This section applies if the child's home is with local authority foster parents.

(2) If—

(a) the child has had his home with the foster parents at all times during the period of five years ending with the removal and the foster parents have given notice of intention to adopt, or

(b) an application has been made for leave under section 42(6) and has not been disposed of,

the following persons may remove the child.

(3) They are—

(a) a person who has the court's leave,

(b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

(4) If subsection (2) does not apply but—

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(a) the child has had his home with the foster parents at all times during the period of one year ending with the removal, and

(b) the foster parents have given notice of intention to adopt,

the following persons may remove the child.

(5) They are—

(a) a person with parental responsibility for the child who is exercising the power in section 20(8) of the 1989 Act,

(b) a person who has the court's leave,

(c) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

39 Partners of parents

(1) This section applies if a child's home is with a partner of a parent and the partner has given notice of intention to adopt.

(2) If the child's home has been with the partner for not less than three years (whether continuous or not) during the period of five years ending with the removal, the following persons may remove the child—

(a) a person who has the court's leave,

(b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

(3) If subsection (2) does not apply, the following persons may remove the child—

(a) a parent or guardian,

(b) a person who has the court's leave,

(c) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

40 Other non-agency cases

(1) In any case where sections 37 to 39 do not apply but—

(a) the people concerned have given notice of intention to adopt, or

(b) the people concerned have applied for leave under section 42(6) and the application has not been disposed of,

the following persons may remove the child.

(2) They are—

(a) a person who has the court's leave,

(b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

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VALID FROM 30/12/2005

Breach of restrictions on removal

41 Recovery orders

(1) This section applies where it appears to the court—
- (a) that a child has been removed in contravention of any of the preceding provisions of this Chapter or that there are reasonable grounds for believing that a person intends to remove a child in contravention of those provisions, or
- (b) that a person has failed to comply with section 31(4), 32(2), 33(2), 34(3) or 35(2).

(2) The court may, on the application of any person, by an order—
- (a) direct any person who is in a position to do so to produce the child on request to any person mentioned in subsection (4),
- (b) authorise the removal of the child by any person mentioned in that subsection,
- (c) require any person who has information as to the child's whereabouts to disclose that information on request to any constable or officer of the court,
- (d) authorise a constable to enter any premises specified in the order and search for the child, using reasonable force if necessary.

(3) Premises may only be specified under subsection (2)(d) if it appears to the court that there are reasonable grounds for believing the child to be on them.

(4) The persons referred to in subsection (2) are—
- (a) any person named by the court,
- (b) any constable,
- (c) any person who, after the order is made under that subsection, is authorised to exercise any power under the order by an adoption agency which is authorised to place the child for adoption.

(5) A person who intentionally obstructs a person exercising a power of removal conferred by the order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) A person must comply with a request to disclose information as required by the order even if the information sought might constitute evidence that he had committed an offence.

(7) But in criminal proceedings in which the person is charged with an offence (other than one mentioned in subsection (8))—
- (a) no evidence relating to the information provided may be adduced, and
- (b) no question relating to the information may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.

(8) The offences excluded from subsection (7) are—

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(a) an offence under section 2 or 5 of the Perjury Act 1911 (c. 6) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath),

(b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (false statements made on oath or otherwise than on oath).

(9) An order under this section has effect in relation to Scotland as if it were an order made by the Court of Session which that court had jurisdiction to make.

VALID FROM 07/12/2004

Preliminaries to adoption

VALID FROM 30/12/2005

42 Child to live with adopters before application

(1) An application for an adoption order may not be made unless—

(a) if subsection (2) applies, the condition in that subsection is met,

(b) if that subsection does not apply, the condition in whichever is applicable of subsections (3) to (5) applies.

(2) If —

(a) the child was placed for adoption with the applicant or applicants by an adoption agency or in pursuance of an order of the High Court, or

(b) the applicant is a parent of the child,

the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them at all times during the period of ten weeks preceding the application.

(3) If the applicant or one of the applicants is the partner of a parent of the child, the condition is that the child must have had his home with the applicant or, as the case may be, applicants at all times during the period of six months preceding the application.

(4) If the applicants are local authority foster parents, the condition is that the child must have had his home with the applicants at all times during the period of one year preceding the application.

(5) In any other case, the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them for not less than three years (whether continuous or not) during the period of five years preceding the application.

(6) But subsections (4) and (5) do not prevent an application being made if the court gives leave to make it.

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(7) An adoption order may not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a couple, both of them together in the home environment have been given—
  (a) where the child was placed for adoption with the applicant or applicants by an adoption agency, to that agency,
  (b) in any other case, to the local authority within whose area the home is.

(8) In this section and sections 43 and 44(1)—
  (a) references to an adoption agency include a Scottish or Northern Irish adoption agency,
  (b) references to a child placed for adoption by an adoption agency are to be read accordingly.

VALID FROM 30/12/2005

43 Reports where child placed by agency

Where an application for an adoption order relates to a child placed for adoption by an adoption agency, the agency must—
  (a) submit to the court a report on the suitability of the applicants and on any other matters relevant to the operation of section 1, and
  (b) assist the court in any manner the court directs.

44 Notice of intention to adopt

(1) This section applies where persons (referred to in this section as "proposed adopters") wish to adopt a child who is not placed for adoption with them by an adoption agency.

(2) An adoption order may not be made in respect of the child unless the proposed adopters have given notice to the appropriate local authority of their intention to apply for the adoption order (referred to in this Act as a "notice of intention to adopt").

(3) The notice must be given not more than two years, or less than three months, before the date on which the application for the adoption order is made.

(4) Where—
  (a) if a person were seeking to apply for an adoption order, subsection (4) or (5) of section 42 would apply, but
  (b) the condition in the subsection in question is not met,

  the person may not give notice of intention to adopt unless he has the court's leave to apply for an adoption order.

(5) On receipt of a notice of intention to adopt, the local authority must arrange for the investigation of the matter and submit to the court a report of the investigation.

(6) In particular, the investigation must, so far as practicable, include the suitability of the proposed adopters and any other matters relevant to the operation of section 1 in relation to the application.

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(7) If a local authority receive a notice of intention to adopt in respect of a child whom they know was (immediately before the notice was given) looked after by another local authority, they must, not more than seven days after the receipt of the notice, inform the other local authority in writing that they have received the notice.

(8) Where—
- (a) a local authority have placed a child with any persons otherwise than as prospective adopters, and
- (b) the persons give notice of intention to adopt,

the authority are not to be treated as leaving the child with them as prospective adopters for the purposes of section 18(1)(b).

(9) In this section, references to the appropriate local authority, in relation to any proposed adopters, are—
- (a) in prescribed cases, references to the prescribed local authority,
- (b) in any other case, references to the local authority for the area in which, at the time of giving the notice of intention to adopt, they have their home,

and "prescribed" means prescribed by regulations.

45 Suitability of adopters

(1) Regulations under section 9 may make provision as to the matters to be taken into account by an adoption agency in determining, or making any report in respect of, the suitability of any persons to adopt a child.

(2) In particular, the regulations may make provision for the purpose of securing that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship.

VALID FROM 30/12/2005

The making of adoption orders

46 Adoption orders

(1) An adoption order is an order made by the court on an application under section 50 or 51 giving parental responsibility for a child to the adopters or adopter.

(2) The making of an adoption order operates to extinguish—
- (a) the parental responsibility which any person other than the adopters or adopter has for the adopted child immediately before the making of the order,
- (b) any order under the 1989 Act or the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),
- (c) any order under the Children (Scotland) Act 1995 (c. 36) other than an excepted order, and
- (d) any duty arising by virtue of an agreement or an order of a court to make payments, so far as the payments are in respect of the adopted child's

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maintenance or upbringing for any period after the making of the adoption order.

"Excepted order" means an order under section 9, 11(1)(d) or 13 of the Children (Scotland) Act 1995 or an exclusion order within the meaning of section 76(1) of that Act.

(3) An adoption order—

(a) does not affect parental responsibility so far as it relates to any period before the making of the order, and

(b) in the case of an order made on an application under section 51(2) by the partner of a parent of the adopted child, does not affect the parental responsibility of that parent or any duties of that parent within subsection (2)(d).

(4) Subsection (2)(d) does not apply to a duty arising by virtue of an agreement—

(a) which constitutes a trust, or

(b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.

(5) An adoption order may be made even if the child to be adopted is already an adopted child.

(6) Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.

47 Conditions for making adoption orders

(1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met; but this section is subject to section 52 (parental etc. consent).

(2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied—

(a) that the parent or guardian consents to the making of the adoption order,

(b) that the parent or guardian has consented under section 20 (and has not withdrawn the consent) and does not oppose the making of the adoption order, or

(c) that the parent's or guardian's consent should be dispensed with.

(3) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court's leave.

(4) The second condition is that—

(a) the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made,

(b) either—

(i) 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 six weeks old, or

(ii) the child was placed for adoption under a placement order, and

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(c) no parent or guardian opposes the making of the adoption order.

(5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court's leave.

(6) The third condition is that the child is free for adoption by virtue of an order made—
(a) in Scotland, under section 18 of the Adoption (Scotland) Act 1978 (c. 28), or
(b) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).

(7) The court cannot give leave under subsection (3) or (5) unless satisfied that there has been a change in circumstances since the consent of the parent or guardian was given or, as the case may be, the placement order was made.

(8) An adoption order may not be made in relation to a person who is or has been married.

(9) An adoption order may not be made in relation to a person who has attained the age of 19 years.

48 Restrictions on making adoption orders

(1) The court may not hear an application for an adoption order in relation to a child, where a previous application to which subsection (2) applies made in relation to the child by the same persons was refused by any court, unless it appears to the court that, because of a change in circumstances or for any other reason, it is proper to hear the application.

(2) This subsection applies to any application—
(a) for an adoption order or a Scottish or Northern Irish adoption order, or
(b) for an order for adoption made in the Isle of Man or any of the Channel Islands.

49 Applications for adoption

(1) An application for an adoption order may be made by—
(a) a couple, or
(b) one person,

but only if it is made under section 50 or 51 and one of the following conditions is met.

(2) The first condition is that at least one of the couple (in the case of an application under section 50) or the applicant (in the case of an application under section 51) is domiciled in a part of the British Islands.

(3) The second condition is that both of the couple (in the case of an application under section 50) or the applicant (in the case of an application under section 51) have been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of the application.

(4) An application for an adoption order may only be made if the person to be adopted has not attained the age of 18 years on the date of the application.

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(5) References in this Act 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.

50 Adoption by couple

(1) An adoption order may be made on the application of a couple where both of them have attained the age of 21 years.

(2) An adoption order may be made on the application of a couple where—
- (a) one of the couple is the mother or the father of the person to be adopted and has attained the age of 18 years, and
- (b) the other has attained the age of 21 years.

51 Adoption by one person

(1) An adoption order may be made on the application of one person who has attained the age of 21 years and is not married.

(2) An adoption order may be made on the application of one person who has attained the age of 21 years if the court is satisfied that the person is the partner of a parent of the person to be adopted.

(3) An adoption order may be made on the application of one person who has attained the age of 21 years and is married if the court is satisfied that—
- (a) the person's spouse cannot be found,
- (b) the spouses have separated and are living apart, and the separation is likely to be permanent, or
- (c) the person's spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.

(4) An adoption order may not be made on an application under this section by the mother or the father of the person to be adopted unless the court is satisfied that—
- (a) the other natural parent is dead or cannot be found,
- (b) by virtue of section 28 of the Human Fertilisation and Embryology Act 1990 (c. 37) **[**[F5](disregarding subsections (5A) to (5I) of that section)**]**, there is no other parent, or
- (c) there is some other reason justifying the child's being adopted by the applicant alone,

and, where the court makes an adoption order on such an application, the court must record that it is satisfied as to the fact mentioned in paragraph (a) or (b) or, in the case of paragraph (c), record the reason.

Textual Amendments

F5 Words in s. 51(4)(b) inserted (1.12.2003) by Human Fertilisation and Embryology (Deceased Fathers) Act 2003 (c. 24), s. 4(2), **Sch. para. 18**; S.I. 2003/3095, art. 2

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Placement and adoption: general

VALID FROM 30/12/2005

52 Parental etc. consent

(1) The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that—
  (a) the parent or guardian cannot be found or is incapable of giving consent, or
  (b) the welfare of the child requires the consent to be dispensed with.

(2) The following provisions apply to references in this Chapter to any parent or guardian of a child giving or withdrawing—
  (a) consent to the placement of a child for adoption, or
  (b) consent to the making of an adoption order (including a future adoption order).

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

(4) The withdrawal of any consent to the placement of a child for adoption, or of any consent given under section 20, is ineffective if it is given after an application for an adoption order is made.

(5) "Consent" means consent given unconditionally and with full understanding of what is involved; but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made.

(6) "Parent" (except in subsections (9) and (10) below) means a parent having parental responsibility.

(7) Consent under section 19 or 20 must be given in the form prescribed by rules, and the rules may prescribe forms in which a person giving consent under any other provision of this Part may do so (if he wishes).

(8) Consent given under section 19 or 20 must be withdrawn—
  (a) in the form prescribed by rules, or
  (b) by notice given to the agency.

(9) Subsection (10) applies if—
  (a) an agency has placed a child for adoption under section 19 in pursuance of consent given by a parent of the child, and
  (b) at a later time, the other parent of the child acquires parental responsibility for the child.

(10) The other parent is to be treated as having at that time given consent in accordance with this section in the same terms as those in which the first parent gave consent.

53 Modification of 1989 Act in relation to adoption

(1) Where—

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(a) a local authority are authorised to place a child for adoption, or
(b) a child who has been placed for adoption by a local authority is less than six weeks old,

regulations may provide for the following provisions of the 1989 Act to apply with modifications, or not to apply, in relation to the child.

(2) The provisions are—
(a) section 22(4)(b), (c) and (d) and (5)(b) (duty to ascertain wishes and feelings of certain persons),
(b) paragraphs 15 and 21 of Schedule 2 (promoting contact with parents and parents' obligation to contribute towards maintenance).

(3) Where a registered adoption society is authorised to place a child for adoption or a child who has been placed for adoption by a registered adoption society is less than six weeks old, regulations may provide—
(a) for section 61 of that Act to have effect in relation to the child whether or not he is accommodated by or on behalf of the society,
(b) for subsections (2)(b) to (d) and (3)(b) of that section (duty to ascertain wishes and feelings of certain persons) to apply with modifications, or not to apply, in relation to the child.

(4) Where a child's home is with persons who have given notice of intention to adopt, no contribution is payable (whether under a contribution order or otherwise) under Part 3 of Schedule 2 to that Act (contributions towards maintenance of children looked after by local authorities) in respect of the period referred to in subsection (5).

(5) That period begins when the notice of intention to adopt is given and ends if—
(a) the period of four months beginning with the giving of the notice expires without the prospective adopters applying for an adoption order, or
(b) an application for such an order is withdrawn or refused.

(6) In this section, "notice of intention to adopt" includes notice of intention to apply for a Scottish or Northern Irish adoption order.

54 Disclosing information during adoption process

Regulations under section 9 may require adoption agencies in prescribed circumstances to disclose in accordance with the regulations prescribed information to prospective adopters.

VALID FROM 30/12/2005

55 Revocation of adoptions on legitimation

(1) Where any child adopted by one natural parent as sole adoptive parent subsequently becomes a legitimated person on the marriage of the natural parents, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke the order.

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(2) In relation to an adoption order made by a magistrates' court, the reference in subsection (1) to the court by which the order was made includes a court acting for the same **[**[F6]local justice**]** area.

Textual Amendments

F6 Words in s. 55(2) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 412**; S.I. 2005/910, art. 3(y)

Disclosure of information in relation to a person's adoption

56 Information to be kept about a person's adoption

(1) In relation to an adopted person, regulations may prescribe—

(a) the information which an adoption agency must keep in relation to his adoption,

(b) the form and manner in which it must keep that information.

(2) Below in this group of sections (that is, this section and sections 57 to 65), any information kept by an adoption agency by virtue of subsection (1)(a) is referred to as section 56 information.

(3) Regulations may provide for the transfer in prescribed circumstances of information held, or previously held, by an adoption agency to another adoption agency.

57 Restrictions on disclosure of protected etc. information

(1) Any section 56 information kept by an adoption agency which—

(a) is about an adopted person or any other person, and

(b) is or includes identifying information about the person in question,

may only be disclosed by the agency to a person (other than the person the information is about) in pursuance of this group of sections.

(2) Any information kept by an adoption agency—

(a) which the agency has obtained from the Registrar General on an application under section 79(5) and any other information which would enable the adopted person to obtain a certified copy of the record of his birth, or

(b) which is information about an entry relating to the adopted person in the Adoption Contact Register,

may only be disclosed to a person by the agency in pursuance of this group of sections.

(3) In this group of sections, information the disclosure of which to a person is restricted by virtue of subsection (1) or (2) is referred to (in relation to him) as protected information.

(4) Identifying information about a person means 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.

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(5) This section does not prevent the disclosure of protected information in pursuance of a prescribed agreement to which the adoption agency is a party.

(6) Regulations may authorise or require an adoption agency to disclose protected information to a person who is not an adopted person.

58 Disclosure of other information

(1) This section applies to any section 56 information other than protected information.

(2) An adoption agency may for the purposes of its functions disclose to any person in accordance with prescribed arrangements any information to which this section applies.

(3) An adoption agency must, in prescribed circumstances, disclose prescribed information to a prescribed person.

59 Offence

Regulations may provide that a registered adoption society which discloses any information in contravention of section 57 is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

60 Disclosing information to adopted adult

(1) This section applies to an adopted person who has attained the age of 18 years.

(2) The adopted person has the right, at his request, to receive from the appropriate adoption agency—
  (a) any information which would enable him to obtain a certified copy of the record of his birth, unless the High Court orders otherwise,
  (b) any prescribed information disclosed to the adopters by the agency by virtue of section 54.

(3) The High Court may make an order under subsection (2)(a), on an application by the appropriate adoption agency, if satisfied that the circumstances are exceptional.

(4) The adopted person also has the right, at his request, to receive from the court which made the adoption order a copy of any prescribed document or prescribed order relating to the adoption.

(5) Subsection (4) does not apply to a document or order so far as it contains information which is protected information.

61 Disclosing protected information about adults

(1) This section applies where—
  (a) a person applies to the appropriate adoption agency for protected information to be disclosed to him, and
  (b) none of the information is about a person who is a child at the time of the application.

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(2) The agency is not required to proceed with the application unless it considers it appropriate to do so.

(3) If the agency does proceed with the application it must take all reasonable steps to obtain the views of any person the information is about as to the disclosure of the information about him.

(4) The agency may then disclose the information if it considers it appropriate to do so.

(5) In deciding whether it is appropriate to proceed with the application or disclose the information, the agency must consider—
   (a) the welfare of the adopted person,
   (b) any views obtained under subsection (3),
   (c) any prescribed matters,

   and all the other circumstances of the case.

(6) This section does not apply to a request for information under section 60(2) or to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of section 57(6).

62 Disclosing protected information about children

(1) This section applies where—
   (a) a person applies to the appropriate adoption agency for protected information to be disclosed to him, and
   (b) any of the information is about a person who is a child at the time of the application.

(2) The agency is not required to proceed with the application unless it considers it appropriate to do so.

(3) If the agency does proceed with the application, then, so far as the information is about a person who is at the time a child, the agency must take all reasonable steps to obtain—
   (a) the views of any parent or guardian of the child, and
   (b) the views of the child, if the agency considers it appropriate to do so having regard to his age and understanding and to all the other circumstances of the case,

   as to the disclosure of the information.

(4) And, so far as the information is about a person who has at the time attained the age of 18 years, the agency must take all reasonable steps to obtain his views as to the disclosure of the information.

(5) The agency may then disclose the information if it considers it appropriate to do so.

(6) In deciding whether it is appropriate to proceed with the application, or disclose the information, where any of the information is about a person who is at the time a child—
   (a) if the child is an adopted child, the child's welfare must be the paramount consideration,
   (b) in the case of any other child, the agency must have particular regard to the child's welfare.

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(7) And, in deciding whether it is appropriate to proceed with the application or disclose the information, the agency must consider—
  (a) the welfare of the adopted person (where subsection (6)(a) does not apply),
  (b) any views obtained under subsection (3) or (4),
  (c) any prescribed matters,

  and all the other circumstances of the case.

(8) This section does not apply to a request for information under section 60(2) or to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of section 57(6).

63 Counselling

(1) Regulations may require adoption agencies to give information about the availability of counselling to persons—
  (a) seeking information from them in pursuance of this group of sections,
  (b) considering objecting or consenting to the disclosure of information by the agency in pursuance of this group of sections, or
  (c) considering entering with the agency into an agreement prescribed for the purposes of section 57(5).

(2) Regulations may require adoption agencies to make arrangements to secure the provision of counselling for persons seeking information from them in prescribed circumstances in pursuance of this group of sections.

(3) The regulations may authorise adoption agencies—
  (a) to disclose information which is required for the purposes of such counselling to the persons providing the counselling,
  (b) where the person providing the counselling is outside the United Kingdom, to require a prescribed fee to be paid.

(4) The regulations may require any of the following persons to provide counselling for the purposes of arrangements under subsection (2)—
  (a) a local authority, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39) or a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)),
  (b) a registered adoption society, an organisation within section 144(3)(b) or an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)),
  (c) an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000 (c. 14).

(5) For the purposes of subsection (4), where the functions of a Health and Social Services Board are exercisable by a Health and Social Services Trust, the reference in sub-paragraph (a) to a Board is to be read as a reference to the Health and Social Services Trust.

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64 Other provision to be made by regulations

(1) Regulations may make provision for the purposes of this group of sections, including provision as to—
- (a) the performance by adoption agencies of their functions,
- (b) the manner in which information may be received, and
- (c) the matters mentioned below in this section.

(2) Regulations may prescribe—
- (a) the manner in which agreements made by virtue of section 57(5) are to be recorded,
- (b) the information to be provided by any person on an application for the disclosure of information under this group of sections.

(3) Regulations may require adoption agencies—
- (a) to give to prescribed persons prescribed information about the rights or opportunities to obtain information, or to give their views as to its disclosure, given by this group of sections,
- (b) to seek prescribed information from, or give prescribed information to, the Registrar General in prescribed circumstances.

(4) Regulations may require the Registrar General—
- (a) to disclose to any person (including an adopted person) at his request any information which the person requires to assist him to make contact with the adoption agency which is the appropriate adoption agency in the case of an adopted person specified in the request (or, as the case may be, in the applicant's case),
- (b) to disclose to the appropriate adoption agency any information which the agency requires about any entry relating to the adopted person on the Adoption Contact Register.

(5) Regulations may provide for the payment of a prescribed fee in respect of the disclosure in prescribed circumstances of any information in pursuance of section 60, 61 or 62; but an adopted person may not be required to pay any fee in respect of any information disclosed to him in relation to any person who (but for his adoption) would be related to him by blood (including half-blood) or marriage.

(6) Regulations may provide for the payment of a prescribed fee by an adoption agency obtaining information under subsection (4)(b).

65 Sections 56 to 65: interpretation

(1) In this group of sections—

"appropriate adoption agency", in relation to an adopted person or to information relating to his adoption, means—
- (a) if the person was placed for adoption by an adoption agency, that agency or (if different) the agency which keeps the information in relation to his adoption,
- (b) in any other case, the local authority to which notice of intention to adopt was given,

"prescribed" means prescribed by subordinate legislation,

"regulations" means regulations under section 9,

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"subordinate legislation" means regulations or, in relation to information to be given by a court, rules.

(2) But—

(a) regulations under section 63(2) imposing any requirement on a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), or an organisation within section 144(3)(b), are to be made by the Scottish Ministers,

(b) regulations under section 63(2) imposing any requirement on a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/ 1265 (N.I. 14)), or an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)), are to be made by the Department of Health, Social Services and Public Safety.

(3) The power of the Scottish Ministers or of the Department of Health, Social Services and Public Safety to make regulations under section 63(2) includes power to make—

(a) any supplementary, incidental or consequential provision,

(b) any transitory, transitional or saving provision,

which the person making the regulations considers necessary or expedient.

(4) Regulations prescribing any fee by virtue of section 64(6) require the approval of the Chancellor of the Exchequer.

(5) Regulations making any provision as to the manner in which any application is to be made for the disclosure of information by the Registrar General require his approval.

VALID FROM 30/12/2005

CHAPTER 4

STATUS OF ADOPTED CHILDREN

66 Meaning of adoption in Chapter 4

(1) In this Chapter "adoption" means—

(a) adoption by an adoption order or a Scottish or Northern Irish adoption order,

(b) adoption by an order made in the Isle of Man or any of the Channel Islands,

(c) an adoption effected under the law of a Convention country outside the British Islands, and certified in pursuance of Article 23(1) of the Convention (referred to in this Act as a "Convention adoption"),

(d) an overseas adoption, or

(e) an adoption recognised by the law of England and Wales and effected under the law of any other country;

and related expressions are to be interpreted accordingly.

(2) But references in this Chapter to adoption do not include an adoption effected before the day on which this Chapter comes into force (referred to in this Chapter as "the appointed day").

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(3) Any reference in an enactment to an adopted person within the meaning of this Chapter includes a reference to an adopted child within the meaning of Part 4 of the Adoption Act 1976 (c. 36).

67 Status conferred by adoption

(1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.

(2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by—
  (a) a couple, or
  (b) one of a couple under section 51(2),
  is to be treated as the child of the relationship of the couple in question.

(3) An adopted person—
  (a) if adopted by one of a couple under section 51(2), is to be treated in law as not being the child of any person other than the adopter and the other one of the couple, and
  (b) in any other case, is to be treated in law, subject to subsection (4), as not being the child of any person other than the adopters or adopter;
  but this subsection does not affect any reference in this Act to a person's natural parent or to any other natural relationship.

(4) In the case of a person adopted by one of the person's natural parents as sole adoptive parent, subsection (3)(b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.

(5) This section has effect from the date of the adoption.

(6) Subject to the provisions of this Chapter and Schedule 4, this section—
  (a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption, and so applies subject to any contrary indication, and
  (b) has effect as respects things done, or events occurring, on or after the adoption.

68 Adoptive relatives

(1) A relationship existing by virtue of section 67 may be referred to as an adoptive relationship, and—
  (a) an adopter may be referred to as an adoptive parent or (as the case may be) as an adoptive father or adoptive mother,
  (b) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree.

(2) Subsection (1) does not affect the interpretation of any reference, not qualified by the word "adoptive", to a relationship.

(3) A reference (however expressed) to the adoptive mother and father of a child adopted by—

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(a) a couple of the same sex, or
(b) a partner of the child's parent, where the couple are of the same sex,

is to be read as a reference to the child's adoptive parents.

69 Rules of interpretation for instruments concerning property

(1) The rules of interpretation contained in this section apply (subject to any contrary indication and to Schedule 4) to any instrument so far as it contains a disposition of property.

(2) In applying section 67(1) and (2) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition is to be interpreted as if—
(a) the adopted person had been born on the date of adoption,
(b) two or more people adopted on the same date had been born on that date in the order of their actual births;

but this does not affect any reference to a person's age.

(3) Examples of phrases in wills on which subsection (2) can operate are—
1. Children of A "living at my death or born afterwards".
2. Children of A "living at my death or born afterwards before any one of such children for the time being in existence attains a vested interest and who attain the age of 21 years".
3. As in example 1 or 2, but referring to grandchildren of A instead of children of A.
4. A for life "until he has a child", and then to his child or children.
Note. Subsection (2) will not affect the reference to the age of 21 years in example 2.

(4) Section 67(3) does not prejudice—
(a) any qualifying interest, or
(b) any interest expectant (whether immediately or not) upon a qualifying interest.

"Qualifying interest" means an interest vested in possession in the adopted person before the adoption.

(5) Where it is necessary to determine for the purposes of a disposition of property effected by an instrument whether a woman can have a child—
(a) it must be presumed that once a woman has attained the age of 55 years she will not adopt a person after execution of the instrument, and
(b) if she does so, then (in spite of section 67) that person is not to 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 the instrument.

(6) In this section, "instrument" includes a private Act settling property, but not any other enactment.

70 Dispositions depending on date of birth

(1) Where a disposition depends on the date of birth of a person who was born illegitimate and who is adopted by one of the natural parents as sole adoptive parent,

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section 69(2) does not affect entitlement by virtue of Part 3 of the Family Law Reform Act 1987 (c. 42) (dispositions of property).

(2) Subsection (1) applies for example where—

(a) a testator dies in 2001 bequeathing a legacy to his eldest grandchild living at a specified time,

(b) his unmarried daughter has a child in 2002 who is the first grandchild,

(c) his married son has a child in 2003,

(d) subsequently his unmarried daughter adopts her child as sole adoptive parent.

In that example the status of the daughter's child as the eldest grandchild of the testator is not affected by the events described in paragraphs (c) and (d).

71 Property devolving with peerages etc.

(1) An adoption does not affect the descent of any peerage or dignity or title of honour.

(2) An adoption does not affect the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour.

(3) Subsection (2) applies only if and so far as a contrary intention is not expressed in the instrument, and has effect subject to the terms of the instrument.

72 Protection of trustees and personal representatives

(1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether any adoption has been effected or revoked if that fact could affect entitlement to the property.

(2) A trustee or personal representative is not liable to any person by reason of a conveyance or distribution of the property made without regard to any such fact if he has not received notice of the fact before the conveyance or distribution.

(3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

73 Meaning of disposition

(1) This section applies for the purposes of this Chapter.

(2) A disposition includes the conferring of a power of appointment and any other disposition of an interest in or right over property; and in this subsection a power of appointment includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.

(3) This Chapter applies to an oral disposition as if contained in an instrument made when the disposition was made.

(4) The date of death of a testator is the date at which a will or codicil is to be regarded as made.

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(5) The provisions of the law of intestate succession applicable to the estate of a deceased person are to be treated as if contained in an instrument executed by him (while of full capacity) immediately before his death.

74 Miscellaneous enactments

(1) Section 67 does not apply for the purposes of—

(a) the table of kindred and affinity in Schedule 1 to the Marriage Act 1949 (c. 76), **[**[F7]or

(b) sections 64 and 65 of the Sexual Offences Act 2003 (sex with an adult relative).**]**

(2) Section 67 does not apply for the purposes of any provision of—

(a) the British Nationality Act 1981 (c. 61),

(b) the Immigration Act 1971 (c. 77),

(c) any instrument having effect under an enactment within paragraph (a) or (b), or

(d) any other provision of the law for the time being in force which determines British citizenship, British overseas territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.

Textual Amendments

F7 S. 74(1)(b) and word substituted for s. 74(1)(b)(c) (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 6 para. 47**; S.I. 2004/874, art. 2

75 Pensions

Section 67(3) does not affect entitlement to a pension which is payable to or for the benefit of a person and is in payment at the time of the person's adoption.

76 Insurance

(1) Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, then—

(a) the rights and liabilities under the policy are by virtue of the adoption transferred to the adoptive parents, and

(b) for the purposes of the enactments relating to such societies and companies, the adoptive parents are to be treated as the person who took out the policy.

(2) Where the adoption is effected by an order made by virtue of section 51(2), the references in subsection (1) to the adoptive parents are to be read as references to the adopter and the other one of the couple.

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VALID FROM 07/12/2004

CHAPTER 5

THE REGISTERS

Adopted Children Register etc.

77 Adopted Children Register

(1) The Registrar General must continue to maintain in the General Register Office a register, to be called the Adopted Children Register.

(2) The Adopted Children Register is not to be open to public inspection or search.

(3) No entries may be made in the Adopted Children Register other than entries—
- (a) directed to be made in it by adoption orders, or
- (b) required to be made under Schedule 1.

(4) A certified copy of an entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the General Register Office, is to be received as evidence of the adoption to which it relates without further or other proof.

(5) Where an entry in the Adopted Children Register contains a record—
- (a) of the date of birth of the adopted person, or
- (b) of the country, or the district and sub-district, of the birth of the adopted person,

a certified copy of the entry is also to be received, without further or other proof, as evidence of that date, or country or district and sub-district, (as the case may be) in all respects as if the copy were a certified copy of an entry in the registers of live-births.

(6) Schedule 1 (registration of adoptions and the amendment of adoption orders) is to have effect.

78 Searches and copies

(1) The Registrar General must continue to maintain at the General Register Office an index of the Adopted Children Register.

(2) Any person may—
- (a) search the index,
- (b) have a certified copy of any entry in the Adopted Children Register.

(3) But 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 the applicant has provided the Registrar General with the prescribed particulars.

"Prescribed" means prescribed by regulations made by the Registrar General with the approval of the Chancellor of the Exchequer.

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(4) The terms, conditions and regulations as to payment of fees, and otherwise, applicable under the Births and Deaths Registration Act 1953 (c. 20), and the Registration Service Act 1953 (c. 37), in respect of—

(a) searches in the index kept in the General Register Office of certified copies of entries in the registers of live-births,

(b) the supply from that office of certified copies of entries in those certified copies,

also apply in respect of searches, and supplies of certified copies, under subsection (2).

79 Connections between the register and birth records

(1) The Registrar General must 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.

(2) Information kept by the Registrar General for the purposes of subsection (1) is not to be open to public inspection or search.

(3) Any such information, 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.

(4) In relation to a person adopted before the appointed day the court may, in exceptional circumstances, order the Registrar General to give any information mentioned in subsection (3) to a person.

(5) On an application made in the prescribed manner by the appropriate adoption agency in respect of an adopted person a record of whose birth is kept by the Registrar General, the Registrar General must give the agency any information relating to the adopted person which is mentioned in subsection (3).

"Appropriate adoption agency" has the same meaning as in section 65.

(6) In relation to a person adopted before the appointed day, Schedule 2 applies instead of subsection (5).

(7) On an application made in the prescribed manner by an adopted person a record of whose birth is kept by the Registrar General and who—

(a) is under the age of 18 years, and

(b) intends to be married,

the Registrar General must inform the applicant whether or not it appears from information contained in the registers of live-births or other records that the applicant and the person whom the applicant intends to marry may be within the prohibited degrees of relationship for the purposes of the Marriage Act 1949 (c. 76).

(8) Before the Registrar General gives any information by virtue of this section, any prescribed fee which he has demanded must be paid.

(9) In this section—

"appointed day" means the day appointed for the commencement of sections 56 to 65,

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"prescribed" means prescribed by regulations made by the Registrar General with the approval of the Chancellor of the Exchequer.

Adoption Contact Register

80 Adoption Contact Register

(1) The Registrar General must continue to maintain at the General Register Office in accordance with regulations a register in two Parts to be called the Adoption Contact Register.

(2) Part 1 of the register is to contain the prescribed information about adopted persons who have given the prescribed notice expressing their wishes as to making contact with their relatives.

(3) The Registrar General may only make an entry in Part 1 of the register for an adopted person—
- (a) a record of whose birth is kept by the Registrar General,
- (b) who has attained the age of 18 years, and
- (c) who the Registrar General is satisfied has such information as is necessary to enable him to obtain a certified copy of the record of his birth.

(4) Part 2 of the register is to contain the prescribed information about persons who have given the prescribed notice expressing their wishes, as relatives of adopted persons, as to making contact with those persons.

(5) The Registrar General may only make an entry in Part 2 of the register for a person—
- (a) who has attained the age of 18 years, and
- (b) who the Registrar General is satisfied 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.

(6) Regulations may provide for—
- (a) the disclosure of information contained in one Part of the register to persons for whom there is an entry in the other Part,
- (b) the payment of prescribed fees in respect of the making or alteration of entries in the register and the disclosure of information contained in the register.

81 Adoption Contact Register: supplementary

(1) The Adoption Contact Register is not to be open to public inspection or search.

(2) In section 80, "relative", in relation to an adopted person, means any person who (but for his adoption) would be related to him by blood (including half-blood) or marriage.

(3) The Registrar General must not give any information entered in the register to any person except in accordance with subsection (6)(a) of that section or regulations made by virtue of section 64(4)(b).

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In section 80, "regulations" means regulations made by the Registrar General with the approval of the Chancellor of the Exchequer, and "prescribed" means prescribed by such regulations.

VALID FROM 30/12/2005

General

82 Interpretation

(1) In this Chapter—

"records" includes certified copies kept by the Registrar General of entries in any register of births,

"registers of live-births" means the registers of live-births made under the Births and Deaths Registration Act 1953 (c. 20).

(2) Any register, record or index maintained under this Chapter may be maintained in any form the Registrar General considers appropriate; and references (however expressed) to entries in such a register, or to their amendment, marking or cancellation, are to be read accordingly.

VALID FROM 01/06/2003

CHAPTER 6

ADOPTIONS WITH A FOREIGN ELEMENT

VALID FROM 07/12/2004

Bringing children into and out of the United Kingdom

83 Restriction on bringing children in

(1) This section applies where a person who is habitually resident in the British Islands (the "British resident")—

(a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption by the British resident, or

(b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of six months ending with that time.

The references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to a child adopted, by the British resident and another person.

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(2) But this section does not apply if the child is intended to be adopted under a Convention adoption order.

(3) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outside the British Islands, whether or not the adoption is—
  (a) an adoption within the meaning of Chapter 4, or
  (b) a full adoption (within the meaning of section 88(3)).

(4) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—
  (a) to apply to an adoption agency (including a Scottish or Northern Irish adoption agency) in the prescribed manner for an assessment of his suitability to adopt the child, and
  (b) to give the agency any information it may require for the purpose of the assessment.

(5) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.

(6) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may—
  (a) provide for any provision of Chapter 3 to apply with modifications or not to apply,
  (b) if notice of intention to adopt has been given, impose functions in respect of the child on the local authority to which the notice was given.

(7) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, he is guilty of an offence if—
  (a) he has not complied with any requirement imposed by virtue of subsection (4), or
  (b) any condition required to be met by virtue of subsection (5) is not met,

  before that time, or before any later time which may be prescribed.

(8) A person guilty of an offence under this section is liable—
  (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both,
  (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.

(9) In this section, "prescribed" means prescribed by regulations and "regulations" means regulations made by the Secretary of State, after consultation with the Assembly.

84 Giving parental responsibility prior to adoption abroad

(1) The High Court may, on an application by persons who the court is satisfied intend to adopt a child under the law of a country or territory outside the British Islands, make an order giving parental responsibility for the child to them.

(2) An order under this section may not give parental responsibility to persons who the court is satisfied meet those requirements as to domicile, or habitual residence,

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in England and Wales which have to be met if an adoption order is to be made in favour of those persons.

(3) An order under this section may not be made unless any requirements prescribed by regulations are satisfied.

(4) An application for an order under this section may not be made unless at all times during the preceding ten weeks the child's home was with the applicant or, in the case of an application by two people, both of them.

(5) Section 46(2) to (4) has effect in relation to an order under this section as it has effect in relation to adoption orders.

(6) Regulations may provide for any provision of this Act which refers to adoption orders to apply, with or without modifications, to orders under this section.

(7) In this section, "regulations" means regulations made by the Secretary of State, after consultation with the Assembly.

VALID FROM 30/12/2005

85 Restriction on taking children out

(1) A child who—
  (a) is a Commonwealth citizen, or
  (b) is habitually resident in the United Kingdom,

must not be removed from the United Kingdom to a place outside the British Islands for the purpose of adoption unless the condition in subsection (2) is met.

(2) The condition is that—
  (a) the prospective adopters have parental responsibility for the child by virtue of an order under section 84, or
  (b) the child is removed under the authority of an order under section 49 of the Adoption (Scotland) Act 1978 (c. 28) or Article 57 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).

(3) Removing a child from the United Kingdom includes arranging to do so; and the circumstances in which a person arranges to remove a child from the United Kingdom include those where he—
  (a) enters into an arrangement for the purpose of facilitating such a removal of the child,
  (b) initiates or takes part in any negotiations of which the purpose is the conclusion of an arrangement within paragraph (a), or
  (c) causes another person to take any step mentioned in paragraph (a) or (b).

  An arrangement includes an agreement (whether or not enforceable).

(4) A person who removes a child from the United Kingdom in contravention of subsection (1) is guilty of an offence.

(5) A person is not guilty of an offence under subsection (4) of causing a person to take any step mentioned in paragraph (a) or (b) of subsection (3) unless it is

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proved that he knew or had reason to suspect that the step taken would contravene subsection (1).

But this subsection only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(6) A person guilty of an offence under this section is liable—

(a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.

(7) In any proceedings under this section—

(a) a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible, upon proof that the officer or the deponent cannot be found in the United Kingdom, as evidence of the matters stated in it, and

(b) it is not necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.

86 Power to modify sections 83 and 85

(1) Regulations may provide for section 83 not to apply if—

(a) the adopters or (as the case may be) prospective adopters are natural parents, natural relatives or guardians of the child in question (or one of them is), or

(b) the British resident in question is a partner of a parent of the child,

and any prescribed conditions are met.

(2) Regulations may provide for section 85(1) to apply with modifications, or not to apply, if—

(a) the prospective adopters are parents, relatives or guardians of the child in question (or one of them is), or

(b) the prospective adopter is a partner of a parent of the child,

and any prescribed conditions are met.

(3) On the occasion of the first exercise of the power to make regulations under this section—

(a) the statutory instrument containing the regulations is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament, and

(b) accordingly section 140(2) does not apply to the instrument.

(4) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Secretary of State after consultation with the Assembly.

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Overseas adoptions

87 Overseas adoptions

(1) In this Act, "overseas adoption"—

(a) means an adoption of a description specified in an order made by the Secretary of State, being a description of adoptions effected under the law of any country or territory outside the British Islands, but

(b) does not include a Convention adoption.

(2) 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 Act.

(3) At any time when such regulations have effect, the Secretary of State must exercise his powers under this section so as to secure that subsequently effected adoptions of any description are not overseas adoptions for the purposes of this Act if he considers that they are not likely within a reasonable time to meet the prescribed requirements.

(4) In this section references to this Act include the Adoption Act 1976 (c. 36).

(5) An order under this section may contain provision as to the manner in which evidence of any overseas adoption may be given.

(6) In this section—

"adoption" means an adoption of a child or of a person who was a child at the time the adoption was applied for,

"regulations" means regulations made by the Secretary of State after consultation with the Assembly.

VALID FROM 30/12/2005

Miscellaneous

88 Modification of section 67 for Hague Convention adoptions

(1) If the High Court is satisfied, on an application under this section, that each of the following conditions is met in the case of a Convention adoption, it may direct that section 67(3) does not apply, or does not apply to any extent specified in the direction.

(2) The conditions are—

(a) that under the law of the country in which the adoption was effected, the adoption is not a full adoption,

(b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention),

(c) that it would be more favourable to the adopted child for a direction to be given under subsection (1).

(3) A full adoption is an adoption by virtue of which the child is to be treated in law as not being the child of any person other than the adopters or adopter.

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(4) In relation to a direction under this section and an application for it, sections 59 and 60 of the Family Law Act 1986 (c. 55) (declarations under Part 3 of that Act as to marital status) apply as they apply in relation to a direction under that Part and an application for such a direction.

89 Annulment etc. of overseas or Hague Convention adoptions

(1) The High Court may, on an application under this subsection, by order annul a Convention adoption or Convention adoption order on the ground that the adoption is contrary to public policy.

(2) The High Court may, on an application under this subsection—
  (a) by order provide for an overseas adoption or a determination under section 91 to cease to be valid on the ground that the adoption or determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case, or
  (b) decide the extent, if any, to which a determination under section 91 has been affected by a subsequent determination under that section.

(3) The High Court may, in any proceedings in that court, decide that an overseas adoption or a determination under section 91 is to be treated, for the purposes of those proceedings, as invalid on either of the grounds mentioned in subsection (2)(a).

(4) Subject to the preceding provisions, the validity of a Convention adoption, Convention adoption order or overseas adoption or a determination under section 91 cannot be called in question in proceedings in any court in England and Wales.

90 Section 89: supplementary

(1) Any application for an order under section 89 or a decision under subsection (2)(b) or (3) of that section must be made in the prescribed manner and within any prescribed period.

"Prescribed" means prescribed by rules.

(2) No application may be made under section 89(1) in respect of an adoption unless immediately before the application is made—
  (a) the person adopted, or
  (b) the adopters or adopter,

habitually reside in England and Wales.

(3) In deciding in pursuance of section 89 whether such an authority as is mentioned in section 91 was competent to entertain a particular case, a court is bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to entertain the case.

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91 Overseas determinations and orders

(1) Subsection (2) applies where any authority of a Convention country (other than the United Kingdom) or of the Channel Islands, the Isle of Man or any British overseas territory has power under the law of that country or territory—

(a) to authorise, or review the authorisation of, an adoption order made in that country or territory, or

(b) to give or review a decision revoking or annulling such an order or a Convention adoption.

(2) If the authority makes a determination in the exercise of that power, the determination is to have effect for the purpose of effecting, confirming or terminating the adoption in question or, as the case may be, confirming its termination.

(3) Subsection (2) is subject to section 89 and to any subsequent determination having effect under that subsection.

VALID FROM 07/02/2004

CHAPTER 7

MISCELLANEOUS

VALID FROM 07/12/2004

Restrictions

92 Restriction on arranging adoptions etc.

(1) A person who is neither an adoption agency nor acting in pursuance of an order of the High Court must not take any of the steps mentioned in subsection (2).

(2) The steps are—

(a) asking a person other than an adoption agency to provide a child for adoption,

(b) asking a person other than an adoption agency to provide prospective adopters for a child,

(c) offering to find a child for adoption,

(d) offering a child for adoption to a person other than an adoption agency,

(e) handing over a child to any person other than an adoption agency with a view to the child's adoption by that or another person,

(f) receiving a child handed over to him in contravention of paragraph (e),

(g) entering into an agreement with any person for the adoption of a child, or for the purpose of facilitating the adoption of a child, where no adoption agency is acting on behalf of the child in the adoption,

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(h) initiating or taking part in negotiations of which the purpose is the conclusion of an agreement within paragraph (g),

(i) causing another person to take any of the steps mentioned in paragraphs (a) to (h).

(3) Subsection (1) does not apply to a person taking any of the steps mentioned in paragraphs (d), (e), (g), (h) and (i) of subsection (2) if the following condition is met.

(4) The condition is that—

(a) the prospective adopters are parents, relatives or guardians of the child (or one of them is), or

(b) the prospective adopter is the partner of a parent of the child.

(5) References to an adoption agency in subsection (2) include a prescribed person outside the United Kingdom exercising functions corresponding to those of an adoption agency, if the functions are being exercised in prescribed circumstances in respect of the child in question.

(6) The Secretary of State may, after consultation with the Assembly, by order make any amendments of subsections (1) to (4), and any consequential amendments of this Act, which he considers necessary or expedient.

(7) In this section—

(a) "agreement" includes an arrangement (whether or not enforceable),

(b) "prescribed" means prescribed by regulations made by the Secretary of State after consultation with the Assembly.

VALID FROM 30/12/2005

93 Offence of breaching restrictions under section 92

(1) If a person contravenes section 92(1), he is guilty of an offence; and, if that person is an adoption society, the person who manages the society is also guilty of the offence.

(2) A person is not guilty of an offence under subsection (1) of taking the step mentioned in paragraph (f) of section 92(2) unless it is proved that he knew or had reason to suspect that the child was handed over to him in contravention of paragraph (e) of that subsection.

(3) A person is not guilty of an offence under subsection (1) of causing a person to take any of the steps mentioned in paragraphs (a) to (h) of section 92(2) unless it is proved that he knew or had reason to suspect that the step taken would contravene the paragraph in question.

(4) But subsections (2) and (3) only apply if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £10,000, or both.

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94 Restriction on reports

(1) 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.

"Prescribed" means prescribed by regulations made by the Secretary of State after consultation with the Assembly.

(2) If a person—
- (a) contravenes subsection (1), or
- (b) causes a person to prepare a report, or submits to any person a report which has been prepared, in contravention of that subsection,

he is guilty of an offence.

(3) If a person who works for an adoption society—
- (a) contravenes subsection (1), or
- (b) causes a person to prepare a report, or submits to any person a report which has been prepared, in contravention of that subsection,

the person who manages the society is also guilty of the offence.

(4) A person is not guilty of an offence under subsection (2)(b) unless it is proved that he knew or had reason to suspect that the report would be, or had been, prepared in contravention of subsection (1).

But this subsection only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

VALID FROM 30/12/2005

95 Prohibition of certain payments

(1) This section applies to any payment (other than an excepted payment) which is made for or in consideration of—
- (a) the adoption of a child,
- (b) giving any consent required in connection with the adoption of a child,
- (c) removing from the United Kingdom a child who is a Commonwealth citizen, or is habitually resident in the United Kingdom, to a place outside the British Islands for the purpose of adoption,
- (d) a person (who is neither an adoption agency nor acting in pursuance of an order of the High Court) taking any step mentioned in section 92(2),
- (e) preparing, causing to be prepared or submitting a report the preparation of which contravenes section 94(1).

(2) In this section and section 96, removing a child from the United Kingdom has the same meaning as in section 85.

(3) Any person who—

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(a) makes any payment to which this section applies,
(b) agrees or offers to make any such payment, or
(c) receives or agrees to receive or attempts to obtain any such payment,

is guilty of an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £10,000, or both.

VALID FROM 30/12/2005

96 Excepted payments

(1) A payment is an excepted payment if it is made by virtue of, or in accordance with provision made by or under, this Act, the Adoption (Scotland) Act 1978 (c. 28) or the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).

(2) A payment is an excepted payment if it is made to a registered adoption society by—
(a) a parent or guardian of a child, or
(b) a person who adopts or proposes to adopt a child,

in respect of expenses reasonably incurred by the society in connection with the adoption or proposed adoption of the child.

(3) A payment is an excepted payment if it is made in respect of any legal or medical expenses incurred or to be incurred by any person in connection with an application to a court which he has made or proposes to make for an adoption order, a placement order, or an order under section 26 or 84.

(4) A payment made as mentioned in section 95(1)(c) is an excepted payment if—
(a) the condition in section 85(2) is met, and
(b) the payment is made in respect of the travel and accommodation expenses reasonably incurred in removing the child from the United Kingdom for the purpose of adoption.

VALID FROM 30/12/2005

97 Sections 92 to 96: interpretation

In sections 92 to 96—
(a) "adoption agency" includes a Scottish or Northern Irish adoption agency,
(b) "payment" includes reward,
(c) references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.

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Information

98 Pre-commencement adoptions: information

(1) Regulations under section 9 may make provision for the purpose of—
- (a) assisting persons adopted before the appointed day who have attained the age of 18 to obtain information in relation to their adoption, and
- (b) facilitating contact between such persons and their relatives.

(2) For that purpose the regulations may confer functions on—
- (a) registered adoption support agencies,
- (b) the Registrar General,
- (c) adoption agencies.

(3) For that purpose the regulations may—
- (a) authorise or require any person mentioned in subsection (2) to disclose information,
- (b) authorise or require the disclosure of information contained in records kept under section 8 of the Public Records Act 1958 (c. 51) (court records),

and may impose conditions on the disclosure of information, including conditions restricting its further disclosure.

(4) The regulations may authorise the charging of prescribed fees by any person mentioned in subsection (2) or in respect of the disclosure of information under subsection (3)(b).

(5) An authorisation or requirement to disclose information by virtue of subsection (3)(a) has effect in spite of any restriction on the disclosure of information in Chapter 5.

(6) The making of regulations by virtue of subsections (2) to (4) which relate to the Registrar General requires the approval of the Chancellor of the Exchequer.

(7) In this section—

"appointed day" means the day appointed for the commencement of sections 56 to 65,

"registered adoption support agency" means an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000 (c. 14),

"relative", in relation to an adopted person, means any person who (but for his adoption) would be related to him by blood (including half-blood) or marriage.

VALID FROM 30/12/2005

Proceedings

99 Proceedings for offences

Proceedings for an offence by virtue of section 9 or 59 may not, without the written consent of the Attorney General, be taken by any person other than **[**[F8]the Commission for Social Care Inspection**]** or the Assembly.

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Textual Amendments

F8 Words in s. 99 substituted (1.4.2004 for E.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 9 para. 32**; S.I. 2004/759, art. 4(2)(b)

100 Appeals

In section 94 of the 1989 Act (appeals under that Act), in subsections (1)(a) and (2), after "this Act" there is inserted " or the Adoption and Children Act 2002 ".

101 Privacy

(1) Proceedings under this Act in the High Court or a County Court may be heard and determined in private.

(2) In section 12 of the Administration of Justice Act 1960 (c. 65) (publication of information relating to proceedings in private), in subsection (1)(a)(ii), after "1989" there is inserted " or the Adoption and Children Act 2002 ".

(3) In section 97 of the 1989 Act (privacy for children involved in certain proceedings), after "this Act" in subsections (1) and (2) there is inserted " or the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

The Children and Family Court Advisory and Support Service

102 Officers of the Service

(1) For the purposes of—

(a) any relevant application,

(b) the signification by any person of any consent to placement or adoption,

rules must provide for the appointment in prescribed cases of an officer of the Children and Family Court Advisory and Support Service ("the Service") **[**[F9]or a Welsh family proceedings officer**]**.

(2) The rules may provide for the appointment of such an officer in other circumstances in which it appears to the Lord Chancellor to be necessary or expedient to do so.

(3) The rules may provide for the officer—

(a) to act on behalf of the child upon the hearing of any relevant application, with the duty of safeguarding the interests of the child in the prescribed manner,

(b) where the court so requests, to prepare a report on matters relating to the welfare of the child in question,

(c) to witness documents which signify consent to placement or adoption,

(d) to perform prescribed functions.

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(4) A report prepared in pursuance of the rules on matters relating to the welfare of a child must—
  (a) deal with prescribed matters (unless the court orders otherwise), and
  (b) be made in the manner required by the court.

(5) A person who—
  (a) in the case of an application for the making, varying or revocation of a placement order, is employed by the local authority which made the application,
  (b) in the case of an application for an adoption order in respect of a child who was placed for adoption, is employed by the adoption agency which placed him, or
  (c) is within a prescribed description,

is not to be appointed under subsection (1) or (2).

(6) In this section, "relevant application" means an application for—
  (a) the making, varying or revocation of a placement order,
  (b) the making of an order under section 26, or the varying or revocation of such an order,
  (c) the making of an adoption order, or
  (d) the making of an order under section 84.

(7) Rules may make provision as to the assistance which the court may require an officer of the Service **[**[F10]or a Welsh family proceedings officer**]** to give to it.

[[F11](8) In this section and section 103 "Welsh family proceedings officer" has the meaning given by section 35 of the Children Act 2004.**]**

Textual Amendments

F9 Words in s. 102(1) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), Sch. 3 para. 16(1)**(2)**; S.I. 2005/700, art. 2(2)

F10 Words in s. 102(7) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), Sch. 3 para. 16(1)**(3)**; S.I. 2005/700, art. 2(2)

F11 S. 102(8) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), Sch. 3 para. 16(1)**(4)**; S.I. 2005/700, art. 2(2)

103 Right of officers of the Service to have access to adoption agency records

(1) Where an officer of the Service **[**[F12]or a Welsh family proceedings officer**]** has been appointed to act under section 102(1), he has the right at all reasonable times to examine and take copies of any records of, or held by, an adoption agency which were compiled in connection with the making, or proposed making, by any person of any application under this Part in respect of the child concerned.

(2) Where an officer of the Service **[**[F13]or a Welsh family proceedings officer**]** takes a copy of any record which he is entitled to examine under this section, that copy or any part of it is admissible as evidence of any matter referred to in any—
  (a) report which he makes to the court in the proceedings in question, or
  (b) evidence which he gives in those proceedings.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Subsection (2) has effect regardless of any enactment or rule of law which would otherwise prevent the record in question being admissible in evidence.

Textual Amendments

F12 Words in s. 103(1) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), **Sch. 3 para. 17**; S.I. 2005/700, art. 2(2)

F13 Words in s. 103(2) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), **Sch. 3 para. 17**; S.I. 2005/700, art. 2(2)

VALID FROM 30/12/2005

Evidence

104 Evidence of consent

(1) If a document signifying any consent which is required by this Part to be given is witnessed in accordance with rules, it is to be admissible in evidence without further proof of the signature of the person by whom it was executed.

(2) A document signifying any such consent which purports to be witnessed in accordance with rules is to be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

VALID FROM 07/12/2004

Scotland, Northern Ireland and the Islands

VALID FROM 30/12/2005

105 Effect of certain Scottish orders and provisions

(1) A Scottish adoption order or an order under section 25 of the Adoption (Scotland) Act 1978 (c. 28) (interim adoption orders) has effect in England and Wales as it has in Scotland, but as if references to the parental responsibilities and the parental rights in relation to a child were to parental responsibility for the child.

(2) An order made under section 18 of the Adoption (Scotland) Act 1978 (freeing orders), and the revocation or variation of such an order under section 20 or 21 of that Act, have effect in England and Wales as they have effect in Scotland, but as if references to the parental responsibilities and the parental rights in relation to a child were to parental responsibility for the child.

(3) Any person who—

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(a) contravenes section 27(1) of that Act (removal where adoption agreed etc.), or

(b) contravenes section 28(1) or (2) of that Act (removal where applicant provided home),

is guilty of an offence and liable 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.

(4) Orders made under section 29 of that Act (order to return or not to remove child) are to have effect in England and Wales as if they were orders of the High Court under section 41 of this Act.

VALID FROM 30/12/2005

106 Effect of certain Northern Irish orders and provisions

(1) A Northern Irish adoption order or an order under Article 26 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)) (interim orders) has effect in England and Wales as it has in Northern Ireland.

(2) An order made under Article 17 or 18 of the Adoption (Northern Ireland) Order 1987 (freeing orders), or the variation or revocation of such an order under Article 20 or 21 of that Order, have effect in England and Wales as they have in Northern Ireland.

(3) Any person who—

(a) contravenes Article 28(1) or (2) of the Adoption (Northern Ireland) Order 1987 (removal where adoption agreed etc.), or

(b) contravenes Article 29(1) or (2) of that Order (removal where applicant provided home),

is guilty of an offence and liable 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.

(4) Orders made under Article 30 of that Order (order to return or not to remove child) are to have effect in England and Wales as if they were orders of the High Court under section 41 of this Act.

VALID FROM 30/12/2005

107 Use of adoption records from other parts of the British Islands

Any document which is receivable as evidence of any matter—

(a) in Scotland under section 45(2) of the Adoption (Scotland) Act 1978 (c. 28),

(b) in Northern Ireland under Article 63(1) of the Adoption (Northern Ireland) Order 1987, or

(c) in the Isle of Man or any of the Channel Islands under an enactment corresponding to section 77(3) of this Act,

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is also receivable as evidence of that matter in England and Wales.

108 Channel Islands and the Isle of Man

(1) Regulations may provide—

(a) for a reference in any provision of this Act to an order of a court to include an order of a court in the Isle of Man or any of the Channel Islands which appears to the Secretary of State to correspond in its effect to the order in question,

(b) for a reference in any provision of this Act to an adoption agency to include a person who appears to the Secretary of State to exercise functions under the law of the Isle of Man or any of the Channel Islands which correspond to those of an adoption agency and for any reference in any provision of this Act to a child placed for adoption by an adoption agency to be read accordingly,

(c) for a reference in any provision of this Act to an enactment (including an enactment contained in this Act) to include a provision of the law of the Isle of Man or any of the Channel Islands which appears to the Secretary of State to correspond in its effect to the enactment,

(d) for any reference in any provision of this Act to the United Kingdom to include the Isle of Man or any of the Channel Islands.

(2) Regulations may modify any provision of this Act, as it applies to any order made, or other thing done, under the law of the Isle of Man or any of the Channel Islands.

(3) In this section, "regulations" means regulations made by the Secretary of State after consultation with the Assembly.

VALID FROM 30/12/2005

General

109 Avoiding delay

(1) In proceedings in which a question may arise as to whether an adoption order or placement order should be made, or any other question with respect to such an order, the court must (in the light of any rules made by virtue of subsection (2))—

(a) draw up a timetable with a view to determining such a question without delay, and

(b) give such directions as it considers appropriate for the purpose of ensuring that the timetable is adhered to.

(2) Rules may—

(a) prescribe periods within which prescribed steps must be taken in relation to such proceedings, and

(b) make other provision with respect to such proceedings for the purpose of ensuring that such questions are determined without delay.

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110 Service of notices etc.

Any notice or information required to be given by virtue of this Act may be given by post.

PART 2

AMENDMENTS OF THE CHILDREN ACT 1989

VALID FROM 01/12/2003

111 Parental responsibility of unmarried father

(1) Section 4 of the 1989 Act (acquisition of responsibility by the father of a child who is not married to the child's mother) is amended as follows.

(2) In subsection (1) (cases where parental responsibility is acquired), for the words after "birth" there is substituted ", the father shall acquire parental responsibility for the child if—

(a) he becomes registered as the child's father under any of the enactments specified in subsection (1A);

(b) he and the child's mother make an agreement (a "parental responsibility agreement") providing for him to have parental responsibility for the child; or

(c) the court, on his application, orders that he shall have parental responsibility for the child."

(3) After that subsection there is inserted—

"(1A) The enactments referred to in subsection (1)(a) are—

(a) paragraphs (a), (b) and (c) of section 10(1) and of section 10A(1) of the Births and Deaths Registration Act 1953;

(b) paragraphs (a), (b)(i) and (c) of section 18(1), and sections 18(2)(b) and 20(1)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965; and

(c) sub-paragraphs (a), (b) and (c) of Article 14(3) of the Births and Deaths Registration (Northern Ireland) Order 1976.

(1B) The Lord Chancellor may by order amend subsection (1A) so as to add further enactments to the list in that subsection."

(4) For subsection (3) there is substituted—

"(2A) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.

(3) The court may make an order under subsection (2A) on the application—

(a) of any person who has parental responsibility for the child; or

(b) with the leave of the court, of the child himself,

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subject, in the case of parental responsibility acquired under subsection (1)(c), to section 12(4).”

(5) Accordingly, in section 2(2) of the 1989 Act (a father of a child who is not married to the child’s mother shall not have parental responsibility for the child unless he acquires it in accordance with the provisions of the Act), for the words from “shall not” to “acquires it” there is substituted “ shall have parental responsibility for the child if he has acquired it (and has not ceased to have it) ”.

(6) In section 104 of the 1989 Act (regulations and orders)—
- (a) in subsection (2), after “section” there is inserted “ 4(1B), ”, and
- (b) in subsection (3), after “section” there is inserted “ 4(1B) or ”.

(7) Paragraph (a) of section 4(1) of the 1989 Act, as substituted by subsection (2) of this section, does not confer parental responsibility on a man who was registered under an enactment referred to in paragraph (a), (b) or (c) of section 4(1A) of that Act, as inserted by subsection (3) of this section, before the commencement of subsection (3) in relation to that paragraph.

VALID FROM 30/12/2005

112 Acquisition of parental responsibility by step-parent

After section 4 of the 1989 Act there is inserted—

“**4A Acquisition of parental responsibility by step-parent**

(1) Where a child’s parent (“parent A”) who has parental responsibility for the child is married to a person who is not the child’s parent (“the step-parent”)—
- (a) parent A or, if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or
- (b) the court may, on the application of the step-parent, order that the step-parent shall have parental responsibility for the child.

(2) An agreement under subsection (1)(a) is also a “parental responsibility agreement”, and section 4(2) applies in relation to such agreements as it applies in relation to parental responsibility agreements under section 4.

(3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application—
- (a) of any person who has parental responsibility for the child; or
- (b) with the leave of the court, of the child himself.

(4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.”

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VALID FROM 30/12/2005

113 Section 8 orders: local authority foster parents

In section 9 of the 1989 Act (restrictions on making section 8 orders)—

(a) in subsection (3)(c), for "three years" there is substituted " one year ", and

(b) subsection (4) is omitted.

VALID FROM 30/12/2005

114 Residence orders: extension to age of 18

(1) In section 12 of the 1989 Act (residence orders and parental responsibility), after subsection (4) there is inserted—

"(5) The power of a court to make a residence order in favour of any person who is not the parent or guardian of the child concerned includes power to direct, at the request of that person, that the order continue in force until the child reaches the age of eighteen (unless the order is brought to an end earlier); and any power to vary a residence order is exercisable accordingly.

(6) Where a residence order includes such a direction, an application to vary or discharge the order may only be made, if apart from this subsection the leave of the court is not required, with such leave".

(2) In section 9 of that Act (restrictions on making section 8 orders), at the beginning of subsection (6) there is inserted " Subject to section 12(5) ".

(3) In section 91 of that Act (effect and duration of orders), in subsection (10), after "9(6)" there is inserted " or 12(5) ".

VALID FROM 07/12/2004

115 Special guardianship

(1) After section 14 of the 1989 Act there is inserted—

"Special guardianship

14A Special guardianship orders

(1) A "special guardianship order" is an order appointing one or more individuals to be a child's "special guardian" (or special guardians).

(2) A special guardian—

(a) must be aged eighteen or over; and

(b) must not be a parent of the child in question,

and subsections (3) to (6) are to be read in that light.

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(3) The court may make a special guardianship order with respect to any child on the application of an individual who—

(a) is entitled to make such an application with respect to the child; or

(b) has obtained the leave of the court to make the application,

or on the joint application of more than one such individual.

(4) Section 9(3) applies in relation to an application for leave to apply for a special guardianship order as it applies in relation to an application for leave to apply for a section 8 order.

(5) The individuals who are entitled to apply for a special guardianship order with respect to a child are—

(a) any guardian of the child;

(b) any individual in whose favour a residence order is in force with respect to the child;

(c) any individual listed in subsection (5)(b) or (c) of section 10 (as read with subsection (10) of that section);

(d) a local authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application.

(6) The court may also make a special guardianship order with respect to a child in any family proceedings in which a question arises with respect to the welfare of the child if—

(a) an application for the order has been made by an individual who falls within subsection (3)(a) or (b) (or more than one such individual jointly); or

(b) the court considers that a special guardianship order should be made even though no such application has been made.

(7) No individual may make an application under subsection (3) or (6)(a) unless, before the beginning of the period of three months ending with the date of the application, he has given written notice of his intention to make the application—

(a) if the child in question is being looked after by a local authority, to that local authority, or

(b) otherwise, to the local authority in whose area the individual is ordinarily resident.

(8) On receipt of such a notice, the local authority must investigate the matter and prepare a report for the court dealing with—

(a) the suitability of the applicant to be a special guardian;

(b) such matters (if any) as may be prescribed by the Secretary of State; and

(c) any other matter which the local authority consider to be relevant.

(9) The court may itself ask a local authority to conduct such an investigation and prepare such a report, and the local authority must do so.

(10) The local authority may make such arrangements as they see fit for any person to act on their behalf in connection with conducting an investigation or preparing a report referred to in subsection (8) or (9).

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(11) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (8).

(12) Subsections (8) and (9) of section 10 apply in relation to special guardianship orders as they apply in relation to section 8 orders.

(13) This section is subject to section 29(5) and (6) of the Adoption and Children Act 2002.

14B Special guardianship orders: making

(1) Before making a special guardianship order, the court must consider whether, if the order were made—
  (a) a contact order should also be made with respect to the child, and
  (b) any section 8 order in force with respect to the child should be varied or discharged.

(2) On making a special guardianship order, the court may also—
  (a) give leave for the child to be known by a new surname;
  (b) grant the leave required by section 14C(3)(b), either generally or for specified purposes.

14C Special guardianship orders: effect

(1) The effect of a special guardianship order is that while the order remains in force—
  (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and
  (b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).

(2) Subsection (1) does not affect—
  (a) the operation of any enactment or rule of law which requires the consent of more than one person with parental responsibility in a matter affecting the child; or
  (b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.

(3) While a special guardianship order is in force with respect to a child, no person may—
  (a) cause the child to be known by a new surname; or
  (b) remove him from the United Kingdom,

  without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of his.

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(5) If the child with respect to whom a special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to—

(a) each parent of the child with parental responsibility; and

(b) each guardian of the child,

but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.

(6) This section is subject to section 29(7) of the Adoption and Children Act 2002.

14D Special guardianship orders: variation and discharge

(1) The court may vary or discharge a special guardianship order on the application of—

(a) the special guardian (or any of them, if there are more than one);

(b) any parent or guardian of the child concerned;

(c) any individual in whose favour a residence order is in force with respect to the child;

(d) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;

(e) the child himself; or

(f) a local authority designated in a care order with respect to the child.

(2) In any family proceedings in which a question arises with respect to the welfare of a child with respect to whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under subsection (1).

(3) The following must obtain the leave of the court before making an application under subsection (1)—

(a) the child;

(b) any parent or guardian of his;

(c) any step-parent of his who has acquired, and has not lost, parental responsibility for him by virtue of section 4A;

(d) any individual falling within subsection (1)(d) who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for him.

(4) Where the person applying for leave to make an application under subsection (1) is the child, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application under subsection (1).

(5) The court may not grant leave to a person falling within subsection (3)(b) (c) or (d) unless it is satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
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14E Special guardianship orders: supplementary

(1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court shall (in the light of any rules made by virtue of subsection (3))—
  (a) draw up a timetable with a view to determining the question without delay; and
  (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.

(2) Subsection (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.

(3) The power to make rules in subsection (2) of section 11 applies for the purposes of this section as it applies for the purposes of that.

(4) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.

(5) Section 11(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to section 8 orders.

14F Special guardianship support services

(1) Each local authority must make arrangements for the provision within their area of special guardianship support services, which means—
  (a) counselling, advice and information; and
  (b) such other services as are prescribed,
  in relation to special guardianship.

(2) The power to make regulations under subsection (1)(b) is to be exercised so as to secure that local authorities provide financial support.

(3) At the request of any of the following persons—
  (a) a child with respect to whom a special guardianship order is in force;
  (b) a special guardian;
  (c) a parent;
  (d) any other person who falls within a prescribed description,
  a local authority may carry out an assessment of that person's needs for special guardianship support services (but, if the Secretary of State so provides in regulations, they must do so if he is a person of a prescribed description, or if his case falls within a prescribed description, or if both he and his case fall within prescribed descriptions).

(4) A local authority may, at the request of any other person, carry out an assessment of that person's needs for special guardianship support services.

(5) Where, as a result of an assessment, a local authority decide that a person has needs for special guardianship support services, they must then decide whether to provide any such services to that person.

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(6) If—

(a) a local authority decide to provide any special guardianship support services to a person, and

(b) the circumstances fall within a prescribed description,

the local authority must prepare a plan in accordance with which special guardianship support services are to be provided to him, and keep the plan under review.

(7) The Secretary of State may by regulations make provision about assessments, preparing and reviewing plans, the provision of special guardianship support services in accordance with plans and reviewing the provision of special guardianship support services.

(8) The regulations may in particular make provision—

(a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;

(b) about the way in which a plan is to be prepared;

(c) about the way in which, and the time at which, a plan or the provision of special guardianship support services is to be reviewed;

(d) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;

(e) as to the circumstances in which a local authority may provide special guardianship support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);

(f) as to the consequences of conditions imposed by virtue of paragraph (e) not being met (including the recovery of any financial support provided);

(g) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority's area;

(h) as to the circumstances in which a local authority may recover from another local authority the expenses of providing special guardianship support services to any person.

(9) A local authority may provide special guardianship support services (or any part of them) by securing their provision by—

(a) another local authority; or

(b) a person within a description prescribed in regulations of persons who may provide special guardianship support services,

and may also arrange with any such authority or person for that other authority or that person to carry out the local authority's functions in relation to assessments under this section.

(10) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.

(11) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority under this section as it applies in relation to the exercise of functions of a local authority under Part 3.

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14G Special guardianship support services: representations

(1) Every local authority shall establish a procedure for considering representations (including complaints) made to them by any person to whom they may provide special guardianship support services about the discharge of their functions under section 14F in relation to him.

(2) Regulations may be made by the Secretary of State imposing time limits on the making of representations under subsection (1).

(3) In considering representations under subsection (1), a local authority shall comply with regulations (if any) made by the Secretary of State for the purposes of this subsection."

(2) The 1989 Act is amended as follows.

(3) In section 1 (welfare of the child), in subsection (4)(b), after "discharge" there is inserted " a special guardianship order or ".

(4) In section 5 (appointment of guardians)—

(a) in subsection (1)—

(i) in paragraph (b), for "or guardian" there is substituted " , guardian or special guardian ", and

(ii) at the end of paragraph (b) there is inserted "; or

(c) paragraph (b) does not apply, and the child's only or last surviving special guardian dies.",

(b) in subsection (4), at the end there is inserted " ; and a special guardian of a child may appoint another individual to be the child's guardian in the event of his death ", and

(c) in subsection (7), at the end of paragraph (b) there is inserted " or he was the child's only (or last surviving) special guardian ".

116 Accommodation of children in need etc.

(1) In section 17 of the 1989 Act (provision of services for children in need, their families and others), in subsection (6) (services that may be provided in exercise of the functions under that section) after "include" there is inserted " providing accommodation and ".

(2) In section 22 of that Act (general duty of local authority in relation to children looked after by them), in subsection (1) (looked after children include those provided with accommodation, with exceptions) before "23B" there is inserted " 17 ".

(3) In section 24A of that Act (advice and assistance for certain children and young persons aged 16 or over), in subsection (5), for "or, in exceptional circumstances, cash" there is substituted "and, in exceptional circumstances, assistance may be given—

(a) by providing accommodation, if in the circumstances assistance may not be given in respect of the accommodation under section 24B, or

(b) in cash".

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Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 07/12/2004

117 Inquiries by local authorities into representations

(1) In section 24D of the 1989 Act (representations: sections 23A to 24B), after subsection (1) there is inserted—

"(1A) Regulations may be made by the Secretary of State imposing time limits on the making of representations under subsection (1)."

(2) Section 26 of that Act (procedure for considering other representations) is amended as follows.

(3) In subsection (3) (which makes provision as to the persons by whom, and the matters in respect of which, representations may be made), for "functions under this Part" there is substituted " qualifying functions ".

(4) After that subsection there is inserted—

"(3A) The following are qualifying functions for the purposes of subsection (3)—

(a) functions under this Part,

(b) such functions under Part 4 or 5 as are specified by the Secretary of State in regulations.

(3B) The duty under subsection (3) extends to representations (including complaints) made to the authority by—

(a) any person mentioned in section 3(1) of the Adoption and Children Act 2002 (persons for whose needs provision is made by the Adoption Service) and any other person to whom arrangements for the provision of adoption support services (within the meaning of that Act) extend,

(b) such other person as the authority consider has sufficient interest in a child who is or may be adopted to warrant his representations being considered by them,

about the discharge by the authority of such functions under the Adoption and Children Act 2002 as are specified by the Secretary of State in regulations."

(5) In subsection (4) (procedure to require involvement of independent person), after paragraph (b) there is inserted—

"but this subsection is subject to subsection (5A)."

(6) After that subsection there is inserted—

"(4A) Regulations may be made by the Secretary of State imposing time limits on the making of representations under this section."

(7) After subsection (5) there is inserted—

"(5A) Regulations under subsection (5) may provide that subsection (4) does not apply in relation to any consideration or discussion which takes place as part of a procedure for which provision is made by the regulations for the purpose of resolving informally the matters raised in the representations."

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VALID FROM 21/05/2004

118 Review of cases of looked after children

(1) In section 26 of the 1989 Act (review of cases of looked after children, etc.), in subsection (2) (regulations as to reviews)—

(a) in paragraph (e), "to consider" is omitted and after "their care" there is inserted—

"(i) to keep the section 31A plan for the child under review and, if they are of the opinion that some change is required, to revise the plan, or make a new plan, accordingly,

(ii) to consider",

(b) in paragraph (f), "to consider" is omitted and after the second mention of "the authority" there is inserted—

"(i) if there is no plan for the future care of the child, to prepare one,

(ii) if there is such a plan for the child, to keep it under review and, if they are of the opinion that some change is required, to revise the plan or make a new plan, accordingly,

(iii) to consider",

(c) after paragraph (j) there is inserted—

"(k) for the authority to appoint a person in respect of each case to carry out in the prescribed manner the functions mentioned in subsection (2A) and any prescribed function".

(2) After that subsection there is inserted—

"(2A) The functions referred to in subsection (2)(k) are—

(a) participating in the review of the case in question,

(b) monitoring the performance of the authority's functions in respect of the review,

(c) referring the case to an officer of the Children and Family Court Advisory and Support Service, if the person appointed under subsection (2)(k) considers it appropriate to do so.

(2B) A person appointed under subsection (2)(k) must be a person of a prescribed description.

(2C) In relation to children whose cases are referred to officers under subsection (2A)(c), the Lord Chancellor may by regulations—

(a) extend any functions of the officers in respect of family proceedings (within the meaning of section 12 of the Criminal Justice and Court Services Act 2000) to other proceedings,

(b) require any functions of the officers to be performed in the manner prescribed by the regulations."

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VALID FROM 30/01/2004

119 Advocacy services

After section 26 of the 1989 Act there is inserted—

"**26A Advocacy services**

(1) Every local authority shall make arrangements for the provision of assistance to—
  (a) persons who make or intend to make representations under section 24D; and
  (b) children who make or intend to make representations under section 26.

(2) The assistance provided under the arrangements shall include assistance by way of representation.

(3) The arrangements—
  (a) shall secure that a person may not provide assistance if he is a person who is prevented from doing so by regulations made by the Secretary of State; and
  (b) shall comply with any other provision made by the regulations in relation to the arrangements.

(4) The Secretary of State may make regulations requiring local authorities to monitor the steps that they have taken with a view to ensuring that they comply with regulations made for the purposes of subsection (3).

(5) Every local authority shall give such publicity to their arrangements for the provision of assistance under this section as they consider appropriate."

VALID FROM 31/01/2005

120 Meaning of "harm" in the 1989 Act

In section 31 of the 1989 Act (care and supervision orders), at the end of the definition of "harm" in subsection (9) there is inserted " including, for example, impairment suffered from seeing or hearing the ill-treatment of another ".

VALID FROM 07/12/2004

121 Care plans

(1) In section 31 of the 1989 Act (care and supervision orders), after subsection (3) there is inserted—

"(3A) No care order may be made with respect to a child until the court has considered a section 31A plan."

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) After that section there is inserted—

"**31A Care orders: care plans**

(1) Where an application is made on which a care order might be made with respect to a child, the appropriate local authority must, within such time as the court may direct, prepare a plan ("a care plan") for the future care of the child.

(2) While the application is pending, the authority must keep any care plan prepared by them under review and, if they are of the opinion some change is required, revise the plan, or make a new plan, accordingly.

(3) A care plan must give any prescribed information and do so in the prescribed manner.

(4) For the purposes of this section, the appropriate local authority, in relation to a child in respect of whom a care order might be made, is the local authority proposed to be designated in the order.

(5) In section 31(3A) and this section, references to a care order do not include an interim care order.

(6) A plan prepared, or treated as prepared, under this section is referred to in this Act as a "section 31A plan"."

(3) If—

(a) before subsection (2) comes into force, a care order has been made in respect of a child and a plan for the future care of the child has been prepared in connection with the making of the order by the local authority designated in the order, and

(b) on the day on which that subsection comes into force the order is in force, or would be in force but for section 29(1) of this Act,

the plan is to have effect as if made under section 31A of the 1989 Act.

VALID FROM 07/12/2004

122 Interests of children in proceedings

(1) In section 41 of the 1989 Act (specified proceedings)—

(a) in subsection (6), after paragraph (h) there is inserted—

"(hh) on an application for the making or revocation of a placement order (within the meaning of section 21 of the Adoption and Children Act 2002);",

(b) after that subsection there is inserted—

"(6A) The proceedings which may be specified under subsection (6)(i) include (for example) proceedings for the making, varying or discharging of a section 8 order."

(2) In section 93 of the 1989 Act (rules of court), in subsection (2), after paragraph (b) there is inserted—

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"(bb) for children to be separately represented in relevant proceedings,".

PART 3

MISCELLANEOUS AND FINAL PROVISIONS

CHAPTER 1

MISCELLANEOUS

VALID FROM 30/12/2005

Advertisements in the United Kingdom

123 Restriction on advertisements etc.

(1) A person must not—
- (a) publish or distribute an advertisement or information to which this section applies, or
- (b) cause such an advertisement or information to be published or distributed.

(2) This section applies to an advertisement indicating that—
- (a) the parent or guardian of a child wants the child to be adopted,
- (b) a person wants to adopt a child,
- (c) a person other than an adoption agency is willing to take any step mentioned in paragraphs (a) to (e), (g) and (h) and (so far as relating to those paragraphs) (i) of section 92(2),
- (d) a person other than an adoption agency is willing to receive a child handed over to him with a view to the child's adoption by him or another, or
- (e) a person is willing to remove a child from the United Kingdom for the purposes of adoption.

(3) This section applies to—
- (a) information about how to do anything which, if done, would constitute an offence under section 85 or 93, section 11 or 50 of the Adoption (Scotland) Act 1978 (c. 28) or Article 11 or 58 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)) (whether or not the information includes a warning that doing the thing in question may constitute an offence),
- (b) information about a particular child as a child available for adoption.

(4) For the purposes of this section and section 124—
- (a) publishing or distributing an advertisement or information means publishing it or distributing it to the public and includes doing so by electronic means (for example, by means of the internet),
- (b) the public includes selected members of the public as well as the public generally or any section of the public.

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(5) Subsection (1) does not apply to publication or distribution by or on behalf of an adoption agency.

(6) The Secretary of State may by order make any amendments of this section which he considers necessary or expedient in consequence of any developments in technology relating to publishing or distributing advertisements or other information by electronic or electro-magnetic means.

(7) References to an adoption agency in this section include a prescribed person outside the United Kingdom exercising functions corresponding to those of an adoption agency, if the functions are being exercised in prescribed circumstances.

"Prescribed" means prescribed by regulations made by the Secretary of State.

(8) Before exercising the power conferred by subsection (6) or (7), the Secretary of State must consult the Scottish Ministers, the Department of Health, Social Services and Public Safety and the Assembly.

(9) In this section—

(a) "adoption agency" includes a Scottish or Northern Irish adoption agency,

(b) references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.

124 Offence of breaching restriction under section 123

(1) A person who contravenes section 123(1) is guilty of an offence.

(2) A person is not guilty of an offence under this section unless it is proved that he knew or had reason to suspect that section 123 applied to the advertisement or information.

But this subsection only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(3) A person guilty of an offence under this section is liable 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.

VALID FROM 13/05/2014

Adoption and Children Act Register

VALID FROM 25/07/2014

125 Adoption and Children Act Register

(1) Her Majesty may by Order in Council make provision for the Secretary of State to establish and maintain a register, to be called the Adoption and Children Act Register, containing—

(a) prescribed information about children who are suitable for adoption and prospective adopters who are suitable to adopt a child,

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(b) prescribed information about persons included in the register in pursuance of paragraph (a) in respect of things occurring after their inclusion.

(2) For the purpose of giving assistance in finding persons with whom children may be placed for purposes other than adoption, an Order under this section may—

(a) provide for the register to contain information about such persons and the children who may be placed with them, and

(b) apply any of the other provisions of this group of sections (that is, this section and sections 126 to 131), with or without modifications.

(3) The register is not to be open to public inspection or search.

(4) An Order under this section may make provision about the retention of information in the register.

(5) Information is to be kept in the register in any form the Secretary of State considers appropriate.

VALID FROM 25/07/2014

126 Use of an organisation to establish the register

(1) The Secretary of State may make an arrangement with an organisation under which any function of his under an Order under section 125 of establishing and maintaining the register, and disclosing information entered in, or compiled from information entered in, the register to any person is performed wholly or partly by the organisation on his behalf.

(2) The arrangement may include provision for payments to be made to the organisation by the Secretary of State.

(3) If the Secretary of State makes an arrangement under this section with an organisation, the organisation is to perform the functions exercisable by virtue of this section in accordance with any directions given by the Secretary of State and the directions may be of general application (or general application in any part of Great Britain) or be special directions.

(4) An exercise of the Secretary of State's powers under subsection (1) or (3) requires the agreement of the Scottish Ministers (if the register applies to Scotland) and of the Assembly (if the register applies to Wales).

(5) References in this group of sections to the registration organisation are to any organisation for the time being performing functions in respect of the register by virtue of arrangements under this section.

VALID FROM 25/07/2014

127 Use of an organisation as agency for payments

(1) An Order under section 125 may authorise an organisation with which an arrangement is made under section 126 to act as agent for the payment or receipt

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of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.

(2) The organisation is to perform the functions exercisable by virtue of this section in accordance with any directions given by the Secretary of State; and the directions may be of general application (or general application in any part of Great Britain) or be special directions.

(3) An exercise of the Secretary of State's power to give directions under subsection (2) requires the agreement of the Scottish Ministers (if any payment agency provision applies to Scotland) and of the Assembly (if any payment agency provision applies to Wales).

VALID FROM 25/07/2014

128 Supply of information for the register

(1) An Order under section 125 may require adoption agencies to give prescribed information to the Secretary of State or the registration organisation for entry in the register.

(2) Information is to be given to the Secretary of State or the registration organisation when required by the Order and in the prescribed form and manner.

(3) An Order under section 125 may require an agency giving information which is entered on the register to pay a prescribed fee to the Secretary of State or the registration organisation.

(4) But an adoption agency is not to disclose any information to the Secretary of State or the registration organisation—
   (a) about prospective adopters who are suitable to adopt a child, or persons who were included in the register as such prospective adopters, without their consent,
   (b) about children suitable for adoption, or persons who were included in the register as such children, without the consent of the prescribed person.

(5) Consent under subsection (4) is to be given in the prescribed form.

VALID FROM 25/07/2014

129 Disclosure of information

(1) Information entered in the register, or compiled from information entered in the register, may only be disclosed under subsection (2) or (3).

(2) Prescribed information entered in the register may be disclosed by the Secretary of State or the registration organisation—
   (a) where an adoption agency is acting on behalf of a child who is suitable for adoption, to the agency to assist in finding prospective adopters with whom it would be appropriate for the child to be placed,

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(b) where an adoption agency is acting on behalf of prospective adopters who are suitable to adopt a child, to the agency to assist in finding a child appropriate for adoption by them.

(3) Prescribed information entered in the register, or compiled from information entered in the register, may be disclosed by the Secretary of State or the registration organisation to any prescribed person for use for statistical or research purposes, or for other prescribed purposes.

(4) An Order under section 125 may prescribe the steps to be taken by adoption agencies in respect of information received by them by virtue of subsection (2).

(5) Subsection (1) does not apply —

(a) to a disclosure of information with the authority of the Secretary of State, or

(b) to a disclosure by the registration organisation of prescribed information to the Scottish Ministers (if the register applies to Scotland) or the Assembly (if the register applies to Wales).

(6) Information disclosed to any person under subsection (2) or (3) may be given on any prescribed terms or conditions.

(7) An Order under section 125 may, in prescribed circumstances, require a prescribed fee to be paid to the Secretary of State or the registration organisation—

(a) by a prescribed adoption agency in respect of information disclosed under subsection (2), or

(b) by a person to whom information is disclosed under subsection (3).

(8) If any information entered in the register is disclosed to a person in contravention of subsection (1), the person disclosing it is guilty of an offence.

(9) A person guilty of an offence under subsection (8) is liable 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.

PROSPECTIVE

[F14]130 Territorial application

. . . . . .

Textual Amendments

F14 S. 130 repealed (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 7**; S.I. 2014/889, art. 5(f)

PROSPECTIVE

131 Supplementary

[[F15](1) In this group of sections—

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[[F16](za) adoption agency" means—
(i) a local authority in England,
(ii) a registered adoption society whose principal office is in England,**]**
(a) "organisation" includes a public body and a private or voluntary organisation,
(b) "prescribed" means prescribed by **[**[F17]regulations**]**,
(c) "the register" means the Adoption and Children Act Register,
[[F18](ca) Welsh adoption agency" means—
(i) a local authority in Wales,
(ii) a registered adoption society whose principal office is in Wales.**]**
[F19](d) . . . . . .
[F20](e) . . . . . .

(2) For the purposes of this group of sections **[**[F21](except sections 125(1A) and 129(2A))**]** —
(a) a child is suitable for adoption if an adoption agency is satisfied that the child ought to be placed for adoption,
(b) prospective adopters are suitable to adopt a child if an adoption agency is satisfied that they are suitable to have a child placed with them for adoption.

[[F22](2A) For the purposes of sections 125(1A) and 129(2A)—
(a) a child is suitable for adoption if a Welsh, Scottish or Northern Irish adoption agency is satisfied that the child ought to be placed for adoption,
(b) prospective adopters are suitable to adopt a child if a Welsh, Scottish or Northern Irish adoption agency is satisfied that they are suitable to have a child placed with them for adoption.**]**

(3) Nothing authorised or required to be done by virtue of this group of sections constitutes an offence under section 93, 94 or 95.

[F23](4) . . . . . .

[F23](5) . . . . . .

[F23](6) . . . . . .

[F23](7) . . . . . .**]**

Textual Amendments

F15 Ss. 125-131 cease to have effect (S.) (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 11(1)**; S.I. 2014/889, art. 5(f)

F16 S. 131(1)(za) inserted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(a)**; S.I. 2014/889, art. 5(f)

F17 Word in s. 131(1)(b) substituted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(b)**; S.I. 2014/889, art. 5(f)

F18 S. 131(1)(ca) inserted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(c)**; S.I. 2014/889, art. 5(f)

F19 S. 131(1)(d) omitted (13.5.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(d)**; S.I. 2014/889, art. 5(f)

F20 S. 131(1)(e) omitted (13.5.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(d)**; S.I. 2014/889, art. 5(f)

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F21 Words in s. 131(2) inserted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(3)**; S.I. 2014/889, art. 5(f)

F22 S. 131(2A) inserted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(4)**; S.I. 2014/889, art. 5(f)

F23 S. 131(4)-(7) omitted (13.5.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(5)**; S.I. 2014/889, art. 5(f)

Other miscellaneous provisions

VALID FROM 30/12/2005

132 Amendment of Adoption (Scotland) Act 1978: contravention of sections 30 to 36 of this Act

After section 29 of the Adoption (Scotland) Act 1978 (c. 28) there is inserted—

"**29A Contravention of sections 30 to 36 of Adoption and Children Act 2002**

(1) A person who contravenes any of the enactments specified in subsection (2) is guilty of an offence and liable 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.

(2) Those enactments are—

(a) section 30(1), (2) and (3) (removal of child placed or who may be placed for adoption),

(b) sections 32(2)(b), 33(2) and 35(2) (return of child by prospective adopters),

(c) section 34(1) (removal of child in contravention of placement order),

(d) section 36(1) (removal of child in non-agency case), and

(e) section 36(5) (return of child to parent or guardian),

of the Adoption and Children Act 2002."

PROSPECTIVE

[F24]133 Scottish restriction on bringing children into or out of United Kingdom

. . . . . .

Textual Amendments

F24 Ss. 132-134 repealed: (S.) (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **sch. 3**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99,

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art. 2); and (E.W.N.I.) (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 2 Pt. 3**

PROSPECTIVE

[F24]134 Amendment of Adoption (Scotland) Act 1978: overseas adoptions

. . . . . .

Textual Amendments

F24 Ss. 132-134 repealed: (S.) (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **sch. 3**; S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2); and (E.W.N.I.) (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 2 Pt. 3**

VALID FROM 01/06/2003

135 Adoption and fostering: criminal records

(1) Part 5 of the Police Act 1997 (c. 50) (certificates of criminal records) is amended as follows.

(2) In section 113 (criminal record certificates), in subsection (3A), for "his suitability" there is substituted " the suitability of the applicant, or of a person living in the same household as the applicant, to be a foster parent or ".

(3) In section 115 (enhanced criminal record certificates), in subsection (6A), for "his suitability" there is substituted " the suitability of the applicant, or of a person living in the same household as the applicant, to be a foster parent or ".

136 Payment of grants in connection with welfare services

(1) Section 93 of the Local Government Act 2000 (c. 22) (payment of grants for welfare services) is amended as follows.

(2) In subsection (1) (payment of grants by the Secretary of State), for the words from "in providing" to the end there is substituted—

"(a) in providing, or contributing to the provision of, such welfare services as may be determined by the Secretary of State, or

(b) in connection with any such welfare services."

(3) In subsection (2) (payment of grants by the Assembly), for the words from "in providing" to the end there is substituted—

"(a) in providing, or contributing to the provision of, such welfare services as may be determined by the Assembly, or

(b) in connection with any such welfare services."

(4) After subsection (6) there is inserted—

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Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(6A) Before making any determination under subsection (3) or (5) the Secretary of State must obtain the consent of the Treasury."

VALID FROM 30/12/2005

137 Extension of the Hague Convention to British overseas territories

(1) Her Majesty may by Order in Council provide for giving effect to the Convention in any British overseas territory.

(2) An Order in Council under subsection (1) in respect of any British overseas territory may, in particular, make any provision corresponding to provision which in relation to any part of Great Britain is made by the Adoption (Intercountry Aspects) Act 1999 (c. 18) or may be made by regulations under section 1 of that Act.

(3) The British Nationality Act 1981 (c. 61) is amended as follows.

(4) In section 1 (acquisition of British citizenship by birth or adoption)—

(a) in subsection (5), at the end of paragraph (b) there is inserted " effected under the law of a country or territory outside the United Kingdom ",

(b) at the end of subsection (5A)(b) there is inserted " or in a designated territory ",

(c) in subsection (8), the words following "section 50" are omitted.

(5) In section 15 (acquisition of British overseas territories citizenship)—

(a) after subsection (5) there is inserted—

"(5A) Where—

(a) a minor who is not a British overseas territories citizen is adopted under a Convention adoption,

(b) on the date on which the adoption is effected—

(i) the adopter or, in the case of a joint adoption, one of the adopters is a British overseas territories citizen, and

(ii) the adopter or, in the case of a joint adoption, both of the adopters are habitually resident in a designated territory, and

(c) the Convention adoption is effected under the law of a country or territory outside the designated territory,

the minor shall be a British overseas territories citizen as from that date.",

(b) in subsection (6), after "order" there is inserted " or a Convention adoption ".

(6) In section 50 (interpretation), in subsection (1)—

(a) after the definition of "company" there is inserted—

""Convention adoption" means an adoption effected under the law of a country or territory in which the Convention is in force, and certified in pursuance of Article 23(1) of the Convention",

(b) after the definition of "Crown service under the government of the United Kingdom" there is inserted—

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

""designated territory" means a qualifying territory, or the Sovereign Base Areas of Akrotiri and Dhekelia, which is designated by Her Majesty by Order in Council under subsection (14)".

(7) After subsection (13) of that section there is inserted—

"(14) For the purposes of the definition of "designated territory" in subsection (1), an Order in Council may—

(a) designate any qualifying territory, or the Sovereign Base Areas of Akrotiri and Dhekelia, if the Convention is in force there, and

(b) make different designations for the purposes of section 1 and section 15;

and, for the purposes of this subsection and the definition of "Convention adoption" in subsection (1), "the Convention" means the Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993.

An Order in Council under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament."

VALID FROM 30/12/2005

138 Proceedings in Great Britain

Proceedings for an offence by virtue of section 9, 59, 93, 94, 95 or 129—

(a) may not be brought more than six years after the commission of the offence but, subject to that,

(b) may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

In relation to Scotland, "the prosecutor" is to be read as "the procurator fiscal".

Amendments etc.

139 Amendments, transitional and transitory provisions, savings and repeals

(1) Schedule 3 (minor and consequential amendments) is to have effect.

(2) Schedule 4 (transitional and transitory provisions and savings) is to have effect.

(3) The enactments set out in Schedule 5 are repealed to the extent specified.

Commencement Information

I5 S. 139(1) in force at 3.2.2003 for specified purposes by S.I. 2003/288, **art. 2(a)**

I6 S. 139(1) in force at 25.2.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(1)(b)**(4)

I7 S. 139(2) in force at 3.2.2003 for specified purposes by S.I. 2003/288, **art. 2(b)**

I8 S. 139(2) in force at 25.2.2003 for specified purposes by S.I. 2003/366, **art. 2(1)(c)**

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Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

I9 S. 139(2) in force at 10.3.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(2)(a)**

CHAPTER 2

FINAL PROVISIONS

140 Orders, rules and regulations

(1) Any power to make subordinate legislation conferred by this Act on the Lord Chancellor, the Secretary of State, the Scottish Ministers, the Assembly or the Registrar General is exercisable by statutory instrument.

(2) A statutory instrument containing subordinate legislation made under any provision of this Act (other than section 14 or 148 or an instrument to which subsection (3) applies) is to be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) A statutory instrument containing subordinate legislation—
- (a) under section 9 which includes provision made by virtue of section 45(2),
- (b) under section 92(6), 94 or 123(6), or
- (c) which adds to, replaces or omits any part of the text of an Act,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(4) Subsections (2) and (3) do not apply to an Order in Council or to subordinate legislation made—
- (a) by the Scottish Ministers, or
- (b) by the Assembly, unless made jointly by the Secretary of State and the Assembly.

(5) A statutory instrument containing regulations under section 63(2) made by the Scottish Ministers is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(6) The power of the Department of Health, Social Services and Public Safety to make regulations under section 63(2) is to be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/ 1573 (N.I. 12)); and any such regulations are to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if they were statutory instruments within the meaning of that Act.

(7) Subordinate legislation made under this Act may make different provision for different purposes.

(8) A power to make subordinate legislation under this Act (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to—
- (a) those cases subject to specified exceptions, or
- (b) a particular case or class of case.

(9) In this section, “subordinate legislation” does not include a direction.

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141 Rules of procedure

(1) The Lord Chancellor may make rules in respect of any matter to be prescribed by rules made by virtue of this Act and dealing generally with all matters of procedure.

(2) Subsection (1) does not apply in relation to proceedings before magistrates' courts, but the power to make rules conferred by section 144 of the Magistrates' Courts Act 1980 (c. 43) includes power to make provision in respect of any of the matters mentioned in that subsection.

(3) In the case of an application for a placement order, for the variation or revocation of such an order, or for an adoption order, the rules must require any person mentioned in subsection (4) to be notified—
- (a) of the date and place where the application will be heard, and
- (b) of the fact that, unless the person wishes or the court requires, the person need not attend.

(4) The persons referred to in subsection (3) are—
- (a) in the case of a placement order, every person who can be found whose consent to the making of the order is required under subsection (3)(a) of section 21 (or would be required but for subsection (3)(b) of that section) or, if no such person can be found, any relative prescribed by rules who can be found,
- (b) in the case of a variation or revocation of a placement order, every person who can be found whose consent to the making of the placement order was required under subsection (3)(a) of section 21 (or would have been required but for subsection (3)(b) of that section),
- (c) in the case of an adoption order—
  - (i) every person who can be found whose consent to the making of the order is required under subsection (2)(a) of section 47 (or would be required but for subsection (2)(c) of that section) or, if no such person can be found, any relative prescribed by rules who can be found,
  - (ii) every person who has consented to the making of the order under section 20 (and has not withdrawn the consent) unless he has given a notice under subsection (4)(a) of that section which has effect,
  - (iii) every person who, if leave were given under section 47(5), would be entitled to oppose the making of the order.

(5) Rules made in respect of magistrates' courts may provide—
- (a) for enabling any fact tending to establish the identity of a child with a child to whom a document relates to be proved by affidavit, and
- (b) for excluding or restricting in relation to any facts that may be so proved the power of a justice of the peace to compel the attendance of witnesses.

142 Supplementary and consequential provision

(1) The appropriate Minister may by order make—
- (a) any supplementary, incidental or consequential provision,
- (b) any transitory, transitional or saving provision,

which he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.

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(2) For the purposes of subsection (1), where any provision of an order extends to England and Wales, and Scotland or Northern Ireland, the appropriate Minister in relation to the order is the Secretary of State.

(3) Before making an order under subsection (1) containing provision which would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, the appropriate Minister must consult the Scottish Ministers.

(4) Subsection (5) applies to any power of the Lord Chancellor, the Secretary of State or the Assembly to make regulations, rules or an order by virtue of any other provision of this Act or of Her Majesty to make an Order in Council by virtue of section 125.

(5) The power may be exercised so as to make—
   (a) any supplementary, incidental or consequential provision,
   (b) any transitory, transitional or saving provision,

   which the person exercising the power considers necessary or expedient.

(6) The provision which may be made under subsection (1) or (5) includes provision modifying Schedule 4 or amending or repealing any enactment or instrument.

   In relation to an Order in Council, "enactment" in this subsection includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

(7) The power of the Registrar General to make regulations under Chapter 5 of Part 1 may, with the approval of the Chancellor of the Exchequer, be exercised so as to make—
   (a) any supplementary, incidental or consequential provision,
   (b) any transitory, transitional or saving provision,

   which the Registrar General considers necessary or expedient.

143 Offences by bodies corporate and unincorporated bodies

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, that person as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director of a body corporate.

(3) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings in England and Wales or Northern Ireland, any rules of court relating to the service of documents have effect as if that body were a corporation.

(4) A fine imposed on an unincorporated body on its conviction of an offence under this Act is to be paid out of the funds of that body.

(5) If an unincorporated body is charged with an offence under this Act—

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(a) in England and Wales, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (procedure on charge of an offence against a corporation),

(b) in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (procedure on charge of an offence against a corporation),

have effect in like manner as in the case of a corporation so charged.

(6) Where an offence under this Act committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

144 General interpretation etc.

(1) In this Act—

"appropriate Minister" means—

(a) in relation to England, Scotland or Northern Ireland, the Secretary of State,

(b) in relation to Wales, the Assembly,

and in relation to England and Wales means the Secretary of State and the Assembly acting jointly,

"the Assembly" means the National Assembly for Wales,

"body" includes an unincorporated body,

"by virtue of" includes "by" and "under",

"child", except where used to express a relationship, means a person who has not attained the age of 18 years,

"the Convention" means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993,

"Convention adoption order" means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c. 18) (regulations giving effect to the Convention), is made as a Convention adoption order,

"Convention country" means a country or territory in which the Convention is in force,

"court" means, subject to any provision made by virtue of Part 1 of Schedule 11 to the 1989 Act, the High Court, a county court or a magistrates' court,

"enactment" includes an enactment comprised in subordinate legislation,

"fee" includes expenses,

"guardian" has the same meaning as in the 1989 Act and includes a special guardian within the meaning of that Act,

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"information" means information recorded in any form,

"local authority" means any unitary authority, or any county council so far as they are not a unitary authority,

"Northern Irish adoption agency" means an adoption agency within the meaning of Article 3 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)),

"Northern Irish adoption order" means an order made, or having effect as if made, under Article 12 of the Adoption (Northern Ireland) Order 1987,

"notice" means a notice in writing,

"registration authority" (in Part 1) has the same meaning as in the Care Standards Act 2000 (c. 14),

"regulations" means regulations made by the appropriate Minister, unless they are required to be made by the Lord Chancellor, the Secretary of State or the Registrar General,

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by marriage,

"rules" means rules made under section 141(1) or made by virtue of section 141(2) under section 144 of the Magistrates' Courts Act 1980 (c. 43),

"Scottish adoption order" means an order made, or having effect as if made, under section 12 of the Adoption (Scotland) Act 1978 (c. 28),

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30),

"unitary authority" means—

(a) the council of any county so far as they are the council for an area for which there are no district councils,
(b) the council of any district comprised in an area for which there is no county council,
(c) the council of a county borough,
(d) the council of a London borough,
(e) the Common Council of the City of London.

(2) Any power conferred by this Act to prescribe a fee by Order in Council or regulations includes power to prescribe—
(a) a fee not exceeding a prescribed amount,
(b) a fee calculated in accordance with the Order or, as the case may be, regulations,
(c) a fee determined by the person to whom it is payable, being a fee of a reasonable amount.

(3) In this Act, "Scottish adoption agency" means—
(a) a local authority, or
(b) a voluntary organisation providing a registered adoption service;

but in relation to the provision of any particular service, references to a Scottish adoption agency do not include a voluntary organisation unless it is registered in respect of that service or a service which, in Scotland, corresponds to that service.

Expressions used in this subsection have the same meaning as in the Regulation of Care (Scotland) Act 2001 (asp 4) and "registered" means registered under Part 1 of that Act.

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(4) In this Act, a couple means—
  (a) a married couple, or
  (b) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.

(5) Subsection (4)(b) does not include two people one of whom is the other's parent, grandparent, sister, brother, aunt or uncle.

(6) References to relationships in subsection (5)—
  (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for adoption, and
  (b) include the relationship of a child with his adoptive, or former adoptive, parents,

  but do not include any other adoptive relationships.

(7) For the purposes of this Act, 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.

145 Devolution: Wales

(1) The references to the Adoption Act 1976 (c. 36) and to the 1989 Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) are to be treated as referring to those Acts as amended by virtue of this Act.

(2) This section does not affect the power to make further Orders varying or omitting those references.

(3) In Schedule 1 to that Order, in the entry for the Adoption Act 1976, "9" is omitted.

(4) The functions exercisable by the Assembly under sections 9 and 9A of the Adoption Act 1976 (by virtue of paragraphs 4 and 5 of Schedule 4 to this Act) are to be treated for the purposes of section 44 of the Government of Wales Act 1998 (c. 38) (parliamentary procedures for subordinate legislation) as if made exercisable by the Assembly by an Order in Council under section 22 of that Act.

146 Expenses

There shall be paid out of money provided by Parliament—
  (a) any expenditure incurred by a Minister of the Crown by virtue of this Act,
  (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

147 Glossary

Schedule 6 (glossary) is to have effect.

148 Commencement

(1) This Act (except sections 116 and 136, this Chapter and the provisions mentioned in subsections (5) and (6)) is to come into force on such day as the Secretary of State may by order appoint.

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(2) Before making an order under subsection (1) (other than an order bringing paragraph 53 of Schedule 3 into force) the Secretary of State must consult the Assembly.

(3) Before making an order under subsection (1) bringing sections 123 and 124 into force, the Secretary of State must also consult the Scottish Ministers and the Department of Health, Social Services and Public Safety.

(4) Before making an order under subsection (1) bringing sections 125 to 131 into force, the Secretary of State must also consult the Scottish Ministers.

(5) The following are to come into force on such day as the Scottish Ministers may by order appoint—
- (a) section 41(5) to (9), so far as relating to Scotland,
- (b) sections 132 to 134,
- (c) paragraphs 21 to 35 and 82 to 84 of Schedule 3,
- (d) paragraphs 15 and 23 of Schedule 4,
- (e) the entries in Schedule 5, so far as relating to the provisions mentioned in paragraphs (c) and (d),
- (f) section 139, so far as relating to the provisions mentioned in the preceding paragraphs.

(6) Sections 2(6), 3(3) and (4), 4 to 17, 27(3), 53(1) to (3), 54, 56 to 65 and 98, paragraphs 13, 65, 66 and 111 to 113 of Schedule 3 and paragraphs 3 and 5 of Schedule 4 are to come into force on such day as the appropriate Minister may by order appoint.

149 Extent

(1) The amendment or repeal of an enactment has the same extent as the enactment to which it relates.

(2) Subject to that and to the following provisions, this Act except section 137 extends to England and Wales only.

(3) The following extend also to Scotland and Northern Ireland—
- (a) sections 63(2) to (5), 65(2)(a) and (b) and (3), 123 and 124,
- (b) this Chapter, except sections 141 and 145.

(4) The following extend also to Scotland—
- (a) section 41(5) to (9),
- (b) sections 125 to 131,
- (c) section 138,
- (d) section 139, so far as relating to provisions extending to Scotland.

(5) In Schedule 4, paragraph 23 extends only to Scotland.

150 Short title

This Act may be cited as the Adoption and Children Act 2002.

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SCHEDULES

VALID FROM 07/12/2004

SCHEDULE 1

Section 77(6)

REGISTRATION OF ADOPTIONS

. . . . . .

VALID FROM 07/12/2004

SCHEDULE 2

Section 79(6)

DISCLOSURE OF BIRTH RECORDS BY REGISTRAR GENERAL

. . . . . .

SCHEDULE 3

Section 139

MINOR AND CONSEQUENTIAL AMENDMENTS

VALID FROM 30/12/2005

The Marriage Act 1949 (c. 76)

1 Section 3 of the Marriage Act 1949 (marriage of person aged under eighteen) is amended as follows.

VALID FROM 30/12/2005

2 In subsection (1), for "person or persons specified in subsection (1A) of this section" there is substituted " appropriate persons ".

VALID FROM 30/12/2005

3 For subsection (1A) there is substituted—

"(1A) The appropriate persons are—

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(a) if none of paragraphs (b) to (h) apply, each of the following—

(i) any parent of the child who has parental responsibility for him; and

(ii) any guardian of the child;

(b) where a special guardianship order is in force with respect to a child, each of the child's special guardians, unless any of paragraphs (c) to (g) applies;

(c) where a care order has effect with respect to the child, the local authority designated in the order, and each parent, guardian or special guardian (in so far as their parental responsibility has not been restricted under section 33(3) of the Children Act 1989), unless paragraph (e) applies;

(d) where a residence order has effect with respect to the child, the persons with whom the child lives, or is to live, as a result of the order, unless paragraph (e) applies;

(e) where an adoption agency is authorised to place the child for adoption under section 19 of the Adoption and Children Act 2002, that agency or, where a care order has effect with respect to the child, the local authority designated in the order;

(f) where a placement order is in force with respect to the child, the appropriate local authority;

(g) where a child has been placed for adoption with prospective adopters, the prospective adopters (in so far as their parental responsibility has not been restricted under section 25(4) of the Adoption and Children Act 2002), in addition to those persons specified in paragraph (e) or (f);

(h) where none of paragraphs (b) to (g) apply but a residence order was in force with respect to the child immediately before he reached the age of sixteen, the persons with whom he lived, or was to live, as a result of the order."

VALID FROM 30/12/2005

4 For subsection (1B) there is substituted—

"(1B) In this section—

"guardian of a child", "parental responsibility", "residence order", "special guardian", "special guardianship order" and "care order" have the same meaning as in the Children Act 1989;

"adoption agency", "placed for adoption", "placement order" and "local authority" have the same meaning as in the Adoption and Children Act 2002;

"appropriate local authority" means the local authority authorised by the placement order to place the child for adoption."

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VALID FROM 30/12/2005

5 In subsection (2), for "The last foregoing subsection" there is substituted " Subsection (1) ".

VALID FROM 01/12/2003

The Births and Deaths Registration Act 1953 (c. 20)

6 In section 10 of the Births and Deaths Registration Act 1953 (registration of father where parents not married)—

(a) in subsection (1)(d)(i), for "a parental responsibility agreement made between them in relation to the child" there is substituted " any agreement made between them under section 4(1)(b) of the Children Act 1989 in relation to the child ",

(b) in subsection (1)(d)(ii), for "the Children Act 1989" there is substituted " that Act ",

(c) in subsection (3), the words following "the Family Law Reform Act 1987" are omitted.

VALID FROM 01/12/2003

7 In section 10A of the Births and Deaths Registration Act 1953 (re-registration of father where parents not married)—

(a) in subsection (1)(d)(i), for "a parental responsibility agreement made between them in relation to the child" there is substituted " any agreement made between them under section 4(1)(b) of the Children Act 1989 in relation to the child ",

(b) in subsection (1)(d)(ii), for "the Children Act 1989" there is substituted " that Act ".

PROSPECTIVE

The Sexual Offences Act 1956 (c. 69)

8 In section 28 of the Sexual Offences Act 1956 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under sixteen), in subsection (4), the "or" at the end of paragraph (a) is omitted, and after that paragraph there is inserted—

"(aa) a special guardianship order under that Act is in force with respect to her and he is not her special guardian; or".

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VALID FROM 30/12/2005

The Health Services and Public Health Act 1968 (c. 46)

9 The Health Services and Public Health Act 1968 is amended as follows.

VALID FROM 30/12/2005

10 In section 64 (financial assistance by the Secretary of State to certain voluntary organisations), in subsection (3)(a)(xviii), for "the Adoption Act 1976" there is substituted " the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

11 In section 65 (financial and other assistance by local authorities to certain voluntary organisations), in subsection (3)(b), for "the Adoption Act 1976" there is substituted " the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

The Local Authority Social Services Act 1970 (c. 42)

12 The Local Authority Social Services Act 1970 is amended as follows.

VALID FROM 30/12/2005

13 In section 7D (default powers of Secretary of State as respects social services functions of local authorities), in subsection (1), after "the Children Act 1989" there is inserted " section 1 or 2(4) of the Adoption (Intercountry Aspects) Act 1999 or the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

14 In Schedule 1 (enactments conferring functions assigned to social services committee)—

(a) the entry relating to the Adoption Act 1976 is omitted,

(b) in the entry relating to the Children Act 1989, after "Consent to application for residence order in respect of child in care" there is inserted " Functions relating to special guardianship orders ",

(c) in the entry relating to the Adoption (Intercountry Aspects) Act 1999—

(i) in the first column, for "Section" there is substituted " Sections 1 and ",

(ii) in the second column, for "Article 9(a) to (c) of" there is substituted " regulations made under section 1 giving effect to

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Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

" and at the end there is inserted " and functions under Article 9(a) to (c) of the Convention ",

and at the end of the Schedule there is inserted—

"Adoption and Children Act 2002	Maintenance of Adoption Service; functions of local authority as adoption agency."

VALID FROM 30/12/2005

The Immigration Act 1971 (c. 77)

15 In section 33(1) of the Immigration Act 1971 (interpretation)—

(a) in the definition of "Convention adoption", after "1978" there is inserted " or in the Adoption and Children Act 2002 ",

(b) in the definition of "legally adopted", for "section 72(2) of the Adoption Act 1976" there is substituted " section 87 of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

The Legitimacy Act 1976 (c. 31)

16 The Legitimacy Act 1976 is amended as follows.

VALID FROM 30/12/2005

17 In section 4 (legitimation of adopted child)—

(a) in subsection (1), after "1976" there is inserted " or section 67 of the Adoption and Children Act 2002 ",

(b) in subsection (2)—

(i) in paragraph (a), after "39" there is inserted " or subsection (3)(b) of the said section 67 ",

(ii) in paragraph (b), after "1976" there is inserted " or section 67, 68 or 69 of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

18 In section 6 (dispositions depending on date of birth), at the end of subsection (2) there is inserted " or section 69(2) of the Adoption and Children Act 2002 ".

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

The Adoption Act 1976 (c. 36)

19 In section 38 of the Adoption Act 1976 (meaning of "adoption" in Part 4), in subsection (2), after "1975" there is inserted " but does not include an adoption of a kind mentioned in paragraphs (c) to (e) of subsection (1) effected on or after the day which is the appointed day for the purposes of Chapter 4 of Part 1 of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

The National Health Service Act 1977 (c. 49)

20 In section 124A(3) of the National Health Service Act 1977 (information provided by the Registrar General to the Secretary of State), the "or" at the end of paragraph (a) is omitted and after that paragraph there is inserted—

"(aa) entered in the Adopted Children Register maintained by the Registrar General under the Adoption and Children Act 2002; or".

VALID FROM 30/12/2005

The Adoption (Scotland) Act 1978 (c. 28)

21 The Adoption (Scotland) Act 1978 is amended as follows.

VALID FROM 30/12/2005

22 In section 11 (restriction on arranging adoptions and placing of children)—

(a) in subsection (2)—

(i) for paragraph (a) there is substituted—

"(a) a registered adoption society (within the meaning of section 2(2) of the Adoption and Children Act 2002)";

and

(ii) for "section 1" there is substituted " section 3(1) ", and

(b) after subsection (2) there is inserted—

"(2A) In relation to the provision of any particular service by an adoption society, the reference in subsection (2)(a) to a registered adoption society does not include a voluntary organisation unless it is registered under Part 2 of the Care Standards Act 2000 in respect of that service or a service which, in England, corresponds to that service."

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Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

23 In section 16 (parental agreement to adoption order)—

(a) in subsection (1), after paragraph (a) there is inserted—

"(aa) each parent or guardian of the child has consented under section 20 of the Adoption and Children Act 2002 (advance consent to adoption), has not withdrawn the consent and does not oppose the making of the adoption order;

(ab) subsection (3A) applies and no parent or guardian of the child opposes the making of the adoption order",

and

(b) after subsection (3) there is inserted—

"(3A) This subsection applies where—

(a) the child has been placed for adoption by an adoption agency (within the meaning of section 2(1) of the Adoption and Children Act 2002) with the prospective adopters in whose favour the adoption order is proposed to be made; and

(b) the child was placed for adoption—

(i) under section 19 of that Act (placing children with parental consent) with the consent of each parent or guardian and the consent of the mother was given when the child was at least six weeks old; or

(ii) under an order made under section 21 of that Act (placement orders) and the child was at least six weeks old when that order was made.

(3B) A parent or guardian may not oppose the making of an adoption order under subsection (1)(aa) or (ab) without the leave of the court.

(3C) The court shall not give leave under subsection (3B) unless satisfied that there has been a change of circumstances since the consent of the parent or guardian was given or, as the case may be, the order under section 21 of that Act was made.

(3D) The withdrawal of—

(a) any consent to the placement of a child for adoption—

(i) under section 19; or

(ii) under an order made under section 21,

of the Adoption and Children Act 2002; or

(b) any consent given under section 20 of that Act,

is ineffective if it is given after an application for an adoption order is made."

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

24 In section 29 (return of children taken away in breach of section 27 or 28)—

(a) in subsection (1), for "section 27 or 28 of the Adoption Act 1976" there is substituted " section 30, 34, 35 or 36 of the Adoption and Children Act 2002 ", and

(b) in subsection (2), for "section 27 or 28 of the Adoption Act 1976", in both places where those words occur, there is substituted " section 30, 34, 35 or 36 of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

25 In section 45 (Adopted Children Register)—

(a) in subsection (6)(d), for sub-paragraph (ii) there is substituted—

"(ii) registered under Part II of the Care Standards Act 2000;";

(b) in subsection (6A)(b), for sub-paragraph (i) there is substituted—

"(i) Schedule 2 to the Adoption and Children Act 2002;".

VALID FROM 30/12/2005

26 In section 47 (annulment etc. of overseas adoptions), in subsection (4), for "section 53 of the Adoption Act 1976" there is substituted " section 89(2) of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

27 In section 50 (restriction on removal of children for adoption outside Great Britain), in subsection (1), for "section 55 of the Adoption Act 1976" there is substituted " section 84 of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

28 Section 52 (restriction on advertisements) is omitted.

VALID FROM 30/12/2005

29 In section 53 (effect of determination and orders made in England and Wales and overseas in adoption proceedings), in subsection (2), the words "England and Wales or" are omitted.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

30 After section 53 there is inserted—

"**53A Effect of certain orders made in England and Wales**

(1) An adoption order (within the meaning of section 46(1) of the Adoption and Children Act 2002) has effect in Scotland as it has in England and Wales but as if any reference to the parental responsibility for the child were to the parental responsibilities and parental rights in relation to the child.

(2) An order made under section 21 of that Act (placement orders), and the variation or revocation of such an order under section 23 or 24 of that Act, have effect in Scotland as they have in England and Wales but as if any reference to the parental responsibility for the child were to the parental responsibilities and parental rights in relation to the child.

53B Effect of placing for adoption etc. under Adoption and Children Act 2002

(1) If—

(a) a child is placed for adoption under section 19 of the Adoption and Children Act 2002 (placing children with parental consent); or

(b) an adoption agency is authorised to place a child for adoption under that section,

sections 25 (parental responsibility) and 28(2) to (4) (further consequences of placement) of that Act have effect in Scotland as they have in England and Wales but with the modifications specified in subsection (2).

(2) Those modifications are—

(a) in section 25, any reference to the parental responsibility for the child is to be read as a reference to the parental responsibilities and parental rights in relation to the child; and

(b) in section 28(2), the reference to the court is to be read as a reference to the authorised court.

53C Further consequences of placement and placement orders

(1) Subsection (2) applies where—

(a) a child is placed for adoption under section 19 of the Adoption and Children Act 2002 (placing children with parental consent); or

(b) an adoption agency is authorised to place the child for adoption under that section.

(2) No order under subsection (1) of section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.) of a kind referred to in subsection (2)(c) (residence orders) of that section may be made in respect of the child.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) On the making of an order under section 21 of the Adoption and Children Act 2002 (a "placement order") in respect of a child, any order under subsection (1) of section 11 of the Children (Scotland) Act 1995 of a kind referred to in subsection (2)(c) to (f) (residence orders, contact orders, specific issue orders and interdicts in relation to parental responsibilities) of that section in respect of the child ceases to have effect.

(4) Where a placement order is in force—

(a) no such order as is referred to in subsection (3) of this section; and

(b) no order under section 55 of the Children (Scotland) Act 1995 (child assessment orders),

may be made in respect of the child."

VALID FROM 30/12/2005

31 In section 54 (evidence of adoption in England, Wales and Northern Ireland), in paragraph (a), for "section 50(2) of the Adoption Act 1976" there is substituted " section 77(4) and (5) of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

32 In section 56 (authorised courts), in subsection (3), for "Great Britain" there is substituted " Scotland ".

VALID FROM 30/12/2005

33 In section 59 (rules of procedure)—

(a) in subsection (2)—

(i) for the words from "in relation to" to "adoption", where it secondly occurs, there is substituted " (except where an order has been made freeing the child for adoption) "; and

(ii) for the words from "every" to "Act" there is substituted " any person mentioned in subsection (2A) "; and

(b) after subsection (2) there is inserted—

"(2A) The persons referred to in subsection (2) are—

(a) every person who can be found and whose agreement or consent to the making of the order is required to be given or dispensed with under this Act or, if no such person can be found, any relative prescribed by rules who can be found;

(b) every person who has consented to the making of the order under section 20 of the Adoption and Children Act 2002 (and has not withdrawn the consent) unless he has given a notice under subsection (4)(a) of that section which has effect;

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(c) every person who, if leave were given under section 16(3B), would be entitled to oppose the making of the order."

VALID FROM 30/12/2005

34 In section 60 (orders, rules and regulations), after subsection (3) there is inserted—

"(3A) An order under section 65(2) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament."

VALID FROM 30/12/2005

35 In section 65 (interpretation), in subsection (1)—

(a) in the definition of "adoption agency", for "section 1 of the Adoption Act 1976" there is substituted " section 2(1) of the Adoption and Children Act 2002 ",

(b) in the definition of "adoption order"—

(i) in paragraph (b), for "section 12 of the Adoption Act 1976" there is substituted " section 46 of the Adoption and Children Act 2002 ",

(ii) in paragraph (c), for "section 55 of the Adoption Act 1976" there is substituted " section 84 of the Adoption and Children Act 2002 ", and

(c) in the definition of "order freeing a child for adoption", paragraph (a) and the word "and" immediately following that paragraph are omitted.

VALID FROM 30/12/2005

The Magistrates' Courts Act 1980 (c. 43)

36 The Magistrates' Courts Act 1980 is amended as follows.

VALID FROM 30/12/2005

37 In section 65 (meaning of family proceedings), in subsection (1), for paragraph (h) there is substituted—

"(h) the Adoption and Children Act 2002;".

VALID FROM 30/12/2005

38 In section 69 (sitting of magistrates' courts for family proceedings), in subsections (2) and (3), for "the Adoption Act 1976" there is substituted " the Adoption and Children Act 2002 ".

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 30/12/2005

39 In section 71 (newspaper reports of family proceedings)—

(a) in subsection (1), "(other than proceedings under the Adoption Act 1976)" is omitted,

(b) in subsection (2)—

(i) for "the Adoption Act 1976" there is substituted " the Adoption and Children Act 2002 ",

(ii) the words following "(a) and (b)" are omitted.

VALID FROM 30/12/2005

40 In Part 1 of Schedule 6 (fees to be taken by justices' chief executives), in the entry relating to family proceedings—

(a) for "the Adoption Act 1976, except under section 21 of that Act", there is substituted " the Adoption and Children Act 2002, except under section 23 of that Act ",

(b) in paragraph (c), for "section 21 of the Adoption Act 1976" there is substituted " section 23 of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

The Mental Health Act 1983 (c. 20)

41 In section 28 of the Mental Health Act 1983 (nearest relative of minor under guardianship, etc.), in subsection (3), after " "guardian"" there is inserted " includes a special guardian (within the meaning of the Children Act 1989), but ".

VALID FROM 30/12/2005

The Child Abduction Act 1984 (c. 37)

42 (1) Section 1 of the Child Abduction Act 1984 (offence of abduction of child by parent, etc.) is amended as follows.

(2) In subsection (2), after paragraph (c) there is inserted—

"(ca) he is a special guardian of the child; or".

(3) In subsection (3)(a), after sub-paragraph (iii) there is inserted—

"(iiia) any special guardian of the child;".

(4) In subsection (4), for paragraphs (a) and (b) there is substituted—

"(a) he is a person in whose favour there is a residence order in force with respect to the child, and he takes or sends the child out of the United Kingdom for a period of less than one month; or

(b) he is a special guardian of the child and he takes or sends the child out of the United Kingdom for a period of less than three months."

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) In subsection (5A), the "or" at the end of sub-paragraph (i) of paragraph (a) is omitted, and after that sub-paragraph there is inserted—

"(ia) who is a special guardian of the child; or".

(6) In subsection (7)(a), after " "guardian of a child,"" there is inserted " "special guardian," ".

VALID FROM 30/12/2005

43 (1) The Schedule to that Act (modifications of section 1 for children in certain cases) is amended as follows.

(2) In paragraph 3 (adoption and custodianship), for sub-paragraphs (1) and (2) there is substituted—

"(1) This paragraph applies where—

(a) a child is placed for adoption by an adoption agency under section 19 of the Adoption and Children Act 2002, or an adoption agency is authorised to place the child for adoption under that section; or

(b) a placement order is in force in respect of the child; or

(c) an application for such an order has been made in respect of the child and has not been disposed of; or

(d) an application for an adoption order has been made in respect of the child and has not been disposed of; or

(e) an order under section 84 of the Adoption and Children Act 2002 (giving parental responsibility prior to adoption abroad) has been made in respect of the child, or an application for such an order in respect of him has been made and has not been disposed of.

(2) Where this paragraph applies, section 1 of this Act shall have effect as if—

(a) the reference in subsection (1) to the appropriate consent were—

(i) in a case within sub-paragraph (1)(a) above, a reference to the consent of each person who has parental responsibility for the child or to the leave of the High Court;

(ii) in a case within sub-paragraph (1)(b) above, a reference to the leave of the court which made the placement order;

(iii) in a case within sub-paragraph (1)(c) or (d) above, a reference to the leave of the court to which the application was made;

(iv) in a case within sub-paragraph (1)(e) above, a reference to the leave of the court which made the order or, as the case may be, to which the application was made;

(b) subsection (3) were omitted;

(c) in subsection (4), in paragraph (a), for the words from "in whose favour" to the first mention of "child" there were substituted "who provides the child's home in a case falling within sub-paragraph (1)(a) or (b) of paragraph 3 of the Schedule to this Act"; and

(d) subsections (4A), (5), (5A) and (6) were omitted."

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) In paragraph 5 (interpretation), in sub-paragraph (a), for the words from "and "adoption order"" to the end there is substituted " , "adoption order", "placed for adoption by an adoption agency" and "placement order" have the same meaning as in the Adoption and Children Act 2002; and ".

PROSPECTIVE

The Matrimonial and Family Proceedings Act 1984 (c. 42)

[F25]44 . . . . . .

Textual Amendments

F25 Sch. 3 para. 44 repealed (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 10**; S.I. 2005/910, art. 3(aa)

VALID FROM 30/12/2005

The Child Abduction and Custody Act 1985 (c. 60)

45 In Schedule 3 to the Child Abduction and Custody Act 1985 (custody orders), in paragraph 1, the "and" at the end of paragraph (b) is omitted and after that paragraph there is inserted—

"(bb) a special guardianship order (within the meaning of the Act of 1989); and",

and paragraph (c)(v) is omitted.

VALID FROM 30/12/2005

The Family Law Act 1986 (c. 55)

46 The Family Law Act 1986 is amended as follows.

VALID FROM 30/12/2005

47 In section 1 (orders to which Part 1 applies), in subsection (1), after paragraph (a) there is inserted—

"(aa) a special guardianship order made by a court in England and Wales under the Children Act 1989;

(ab) an order made under section 26 of the Adoption and Children Act 2002 (contact), other than an order varying or revoking such an order".

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VALID FROM 30/12/2005

48 In section 2 (jurisdiction: general), after subsection (2) there is inserted—

"(2A) A court in England and Wales shall not have jurisdiction to make a special guardianship order under the Children Act 1989 unless the condition in section 3 of this Act is satisfied.

(2B) A court in England and Wales shall not have jurisdiction to make an order under section 26 of the Adoption and Children Act 2002 unless the condition in section 3 of this Act is satisfied."

VALID FROM 30/12/2005

49 In section 57 (declarations as to adoptions effected overseas)—

(a) for subsection (1)(a) there is substituted—

"(a) a Convention adoption, or an overseas adoption, within the meaning of the Adoption and Children Act 2002, or",

(b) in subsection (2)(a), after "1976" there is inserted " or section 67 of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

The Family Law Reform Act 1987 (c. 42)

50 The Family Law Reform Act 1987 is amended as follows.

VALID FROM 30/12/2005

51 In section 1 (general principle), for paragraph (c) of subsection (3) there is substituted—

"(c) is an adopted person within the meaning of Chapter 4 of Part 1 of the Adoption and Children Act 2002".

VALID FROM 30/12/2005

52 In section 19 (dispositions of property), in subsection (5), after "1976" there is inserted " or section 69 of the Adoption and Children Act 2002 ".

The Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22))

53 In Article 2(2) (interpretation), in the definition of "prescribed", for "Articles 54" there is substituted " Articles 53(3B) and (3D), 54 ".

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information

I10 Sch. 3 para. 53 in force at 3.2.2003 by S.I. 2003/288, **art. 2(a)**

VALID FROM 30/12/2005

The Children Act 1989 (c. 41)

54 The Children Act 1989 is amended as follows.

VALID FROM 30/12/2005

55 In section 8 (residence, contact and other orders with respect to children), in subsection (4), for paragraph (d) there is substituted—

"(d) the Adoption and Children Act 2002;".

VALID FROM 30/12/2005

56 In section 10 (power of court to make section 8 orders)—

(a) in subsection (4)(a), for "or guardian" there is substituted " , guardian or special guardian ",

(b) after subsection (4)(a) there is inserted—

"(aa) any person who by virtue of section 4A has parental responsibility for the child;",

(c) after subsection (5) there is inserted—

"(5A) A local authority foster parent is entitled to apply for a residence order with respect to a child if the child has lived with him for a period of at least one year immediately preceding the application.",

(d) after subsection (7) there is inserted—

"(7A) If a special guardianship order is in force with respect to a child, an application for a residence order may only be made with respect to him, if apart from this subsection the leave of the court is not required, with such leave."

VALID FROM 30/12/2005

57 In section 12 (residence orders and parental responsibility), in subsection (3)—

(a) paragraph (a) is omitted,

(b) in paragraph (b), for "section 55 of the Act of 1976" there is substituted " section 84 of the Adoption and Children Act 2002 ".

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

58 In section 16 (family assistance orders), in subsection (2)(a), for "or guardian" there is substituted " , guardian or special guardian ".

VALID FROM 30/12/2005

59 In section 20 (provision of accommodation for children: general), in subsection (9), the "or" at the end of paragraph (a) is omitted and after that paragraph there is inserted—

"(aa) who is a special guardian of the child; or".

VALID FROM 07/12/2004

60 In section 24 (persons qualifying for advice and assistance)—

(a) for subsection (1) there is substituted—

"(1) In this Part "a person qualifying for advice and assistance" means a person to whom subsection (1A) or (1B) applies.

(1A) This subsection applies to a person—

(a) who has reached the age of sixteen but not the age of twenty-one;

(b) with respect to whom a special guardianship order is in force (or, if he has reached the age of eighteen, was in force when he reached that age); and

(c) who was, immediately before the making of that order, looked after by a local authority.

(1B) This subsection applies to a person to whom subsection (1A) does not apply, and who—

(a) is under twenty-one; and

(b) at any time after reaching the age of sixteen but while still a child was, but is no longer, looked after, accommodated or fostered.",

(b) in subsection (2), for "subsection (1)(b)" there is substituted " subsection (1B)(b) ",

(c) in subsection (5), before paragraph (a) there is inserted—

"(za) in the case of a person to whom subsection (1A) applies, a local authority determined in accordance with regulations made by the Secretary of State;".

VALID FROM 30/12/2005

61 In section 24A (advice and assistance for qualifying persons)—

(a) in subsection (2)(b), after "a person" there is inserted " to whom section 24(1A) applies, or to whom section 24(1B) applies and ",

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in subsection (3)(a), after "if" there is inserted " he is a person to whom section 24(1A) applies, or he is a person to whom section 24(1B) applies and ".

VALID FROM 30/12/2005

62 In section 24B (assistance with employment, education and training), in each of subsections (1) and (3)(b), after "of" there is inserted " section 24(1A) or ".

VALID FROM 30/12/2005

63 In section 33 (effect of care order)—

(a) in subsection (3)(b), for "a parent or guardian of the child" there is substituted "—

(i) a parent, guardian or special guardian of the child; or

(ii) a person who by virtue of section 4A has parental responsibility for the child,",

(b) in subsection (5), for "a parent or guardian of the child who has care of him" there is substituted " a person mentioned in that provision who has care of the child ",

(c) in subsection (6)(b)—

(i) sub-paragraph (i) is omitted,

(ii) in sub-paragraph (ii), for "section 55 of the Act of 1976" there is substituted " section 84 of the Adoption and Children Act 2002 ",

(d) in subsection (9), for "a parent or guardian of the child" there is substituted " a person mentioned in that provision ".

VALID FROM 30/12/2005

64 In section 34 (parental contact etc. with children in care)—

(a) in subsection (1)(b), after "guardian" there is inserted " or special guardian ", and

(b) after subsection (1)(b) there is inserted—

"(ba) any person who by virtue of section 4A has parental responsibility for him;".

VALID FROM 30/12/2005

65 In section 80 (inspection of children's homes by persons authorised by Secretary of State), in subsection (1), paragraphs (e) and (f) are omitted.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PROSPECTIVE

66 In section 81 (inquiries), in subsection (1), paragraph (b) is omitted.

VALID FROM 30/12/2005

67 In section 88 (amendments of adoption legislation), subsection (1) is omitted.

VALID FROM 30/12/2005

68 In section 91 (effect and duration of orders, etc.)—

(a) after subsection (5) there is inserted—

"(5A) The making of a special guardianship order with respect to a child who is the subject of—

(a) a care order; or

(b) an order under section 34,

discharges that order.",

(b) in subsection (7), after "4(1)" there is inserted " 4A(1) ",

(c) in subsection (8)(a), after "4" there is inserted " or 4A ".

VALID FROM 30/12/2005

69 In section 102 (power of constable to assist in exercise of certain powers to search for children or inspect premises), in subsection (6), paragraph (c) is omitted.

VALID FROM 30/12/2005

70 In section 105 (interpretation), in subsection (1)—

(a) in the definition of "adoption agency", for "section 1 of the Adoption Act 1976" there is substituted " section 2 of the Adoption and Children Act 2002 ",

(b) at the appropriate place there is inserted—

""section 31A plan" has the meaning given by section 31A(6);",

(c) in the definition of "parental responsibility agreement", for "section 4(1)" there is substituted " sections 4(1) and 4A(2) ",

(d) the definition of "protected child" is omitted,

(e) after the definition of "special educational needs" there is inserted—

""special guardian" and "special guardianship order" have the meaning given by section 14A;".

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

71 In Schedule 1 (financial provision for children)—

(a) in paragraph 1 (orders for financial relief against parents)—

(i) in sub-paragraph (1), for "or guardian" there is substituted " , guardian or special guardian ", and

(ii) in sub-paragraph (6), after "order" there is inserted " or a special guardianship order ",

(b) in paragraph 6 (variation etc of orders for periodical payments), in sub-paragraph (8), after "guardian" there is inserted " or special guardian ",

(c) in paragraph 8 (financial relief under other enactments), in sub-paragraph (1) and in sub-paragraph (2)(b), after "residence order" there is inserted " or a special guardianship order ",

(d) in paragraph 14 (financial provision for child resident in country outside England and Wales), in sub-paragraph (1)(b), after "guardian" there is inserted " or special guardian ".

VALID FROM 30/12/2005

72 In Schedule 2, in paragraph 19 (arrangements by local authorities to assist children to live abroad)—

(a) in sub-paragraph (4) (arrangements to assist children to live abroad), after "guardian," there is inserted " special guardian, ",

(b) in sub-paragraph (6), for the words from the beginning to "British subject)" there is substituted " Section 85 of the Adoption and Children Act 2002 (which imposes restrictions on taking children out of the United Kingdom) ",

(c) after sub-paragraph (8) there is inserted—

"(9) This paragraph does not apply to a local authority placing a child for adoption with prospective adopters."

VALID FROM 30/12/2005

73 In Schedule 8 (privately fostered children), in paragraph 5, for sub-paragraphs (a) and (b) there is substituted "he is placed in the care of a person who proposes to adopt him under arrangements made by an adoption agency within the meaning of—

(a) section 2 of the Adoption and Children Act 2002;

(b) section 1 of the Adoption (Scotland) Act 1978; or

(c) Article 3 of the Adoption (Northern Ireland) Order 1987".

VALID FROM 30/12/2005

74 Part 1 of Schedule 10 is omitted.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

75 In Schedule 11 (jurisdiction), in paragraphs 1 and 2, for the words "the Adoption Act 1976", wherever they occur, there is substituted " the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

The Human Fertilisation and Embryology Act 1990 (c. 37)

76 The Human Fertilisation and Embryology Act 1990 is amended as follows.

VALID FROM 30/12/2005

77 In section 27 (meaning of mother), in subsection (2), for "child of any person other than the adopter or adopters" there is substituted " woman's child ".

VALID FROM 30/12/2005

78 In section 28 (meaning of father), in subsection (5)(c), for "child of any person other than the adopter or adopters" there is substituted " man's child ".

PROSPECTIVE

79 In section 30 (parental orders in favour of gamete donors), in subsection (10) for "Adoption Act 1976" there is substituted " Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

The Courts and Legal Services Act 1990 (c. 41)

80 In section 58A of the Courts and Legal Services Act 1990 (conditional fee agreements: supplementary), in subsection (2), for paragraph (b) there is substituted—

"(b) the Adoption and Children Act 2002;".

VALID FROM 30/12/2005

The Child Support Act 1991 (c. 48)

81 In section 26 of the Child Support Act 1991 (disputes about parentage), in subsection (3), after "1976" there is inserted " or Chapter 4 of Part 1 of the Adoption and Children Act 2002 ".

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

The Children (Scotland) Act 1995 (c. 36)

82 Section 86 of the Children (Scotland) Act 1995 (parental responsibilities order: general) is amended as follows.

VALID FROM 30/12/2005

83 In subsection (3), in paragraph (a), for "section 18 (freeing for adoption) or 55 (adoption abroad) of the Adoption Act 1976" there is substituted " section 19 (placing children with parental consent) or 84 (giving parental responsibility prior to adoption abroad) of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

84 In subsection (6), in paragraph (b), for the words from the beginning to "Adoption Act 1976" there is substituted—

"(b) he becomes the subject of an adoption order within the meaning of the Adoption (Scotland) Act 1978;

(bb) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002, is authorised to place him for adoption under section 19 of that Act (placing children with parental consent) or he becomes the subject of an order under section 21 of that Act (placement orders) or under section 84 of that Act (giving parental responsibility prior to adoption abroad)".

VALID FROM 30/12/2005

The Family Law Act 1996 (c. 27)

85 The Family Law Act 1996 is amended as follows.

VALID FROM 30/12/2005

86 In section 62 (meaning of "relevant child" etc.)—

(a) in subsection (2), in paragraph (b), after "the Adoption Act 1976" there is inserted " , the Adoption and Children Act 2002 ",

(b) in subsection (5), for the words from "has been freed" to "1976" there is substituted " falls within subsection (7) ".

VALID FROM 30/12/2005

87 At the end of that section there is inserted—

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"(7) A child falls within this subsection if—

(a) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002, has power to place him for adoption under section 19 of that Act (placing children with parental consent) or he has become the subject of an order under section 21 of that Act (placement orders), or

(b) he is freed for adoption by virtue of an order made—

(i) in England and Wales, under section 18 of the Adoption Act 1976,

(ii) in Scotland, under section 18 of the Adoption (Scotland) Act 1978, or

(iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987."

VALID FROM 30/12/2005

88 In section 63 (interpretation of Part 4)—

(a) in subsection (1), for the definition of "adoption order", there is substituted—

""adoption order" means an adoption order within the meaning of section 72(1) of the Adoption Act 1976 or section 46(1) of the Adoption and Children Act 2002;",

(b) in subsection (2), after paragraph (h) there is inserted—

"(i) the Adoption and Children Act 2002."

VALID FROM 30/12/2005

The Housing Act 1996 (c. 52)

89 Section 178 of the Housing Act 1996 (meaning of associated person) is amended as follows.

VALID FROM 30/12/2005

90 In subsection (2), for the words from "has been freed" to "1976" there is substituted " falls within subsection (2A) ".

VALID FROM 30/12/2005

91 After that subsection there is inserted—

"(2A) A child falls within this subsection if—

(a) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002, is authorised to place him for adoption under section 19 of that Act (placing children with

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parental consent) or he has become the subject of an order under section 21 of that Act (placement orders), or

(b) he is freed for adoption by virtue of an order made—

(i) in England and Wales, under section 18 of the Adoption Act 1976,

(ii) in Scotland, under section 18 of the Adoption (Scotland) Act 1978, or

(iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987."

VALID FROM 30/12/2005

92 In subsection (3), for the definition of "adoption order", there is substituted—

""adoption order" means an adoption order within the meaning of section 72(1) of the Adoption Act 1976 or section 46(1) of the Adoption and Children Act 2002;".

VALID FROM 30/12/2005

The Police Act 1997 (c. 50)

93 In section 115 of the Police Act 1997 (enhanced criminal records), in subsection (5)(h), for "section 11 of the Adoption Act 1976" there is substituted " section 2 of the Adoption and Children Act 2002 ".

PROSPECTIVE

The Protection of Children Act 1999 (c. 14)

94 In section 2B of the Protection of Children Act 1999 (individuals named in the findings of certain inquiries), in subsection (7), after paragraph (a) there is inserted—

"(vi) section 17 of the Adoption and Children Act 2002;".

VALID FROM 30/12/2005

The Adoption (Intercountry Aspects) Act 1999 (c. 18)

95 The following provisions of the Adoption (Intercountry Aspects) Act 1999 cease to have effect in relation to England and Wales: sections 3, 6, 8, 9 and 11 to 13.

VALID FROM 30/12/2005

96 Section 2 of that Act (accredited bodies) is amended as follows.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

97 In subsection (2A)—
(a) for the words from the beginning to "2000" there is substituted " A registered adoption society ",
(b) for "agency" there is substituted " society ".

VALID FROM 30/12/2005

98 For subsection (5) there is substituted—

"(5) In this section, "registered adoption society" has the same meaning as in section 2 of the Adoption and Children Act 2002 (basic definitions); and expressions used in this section in its application to England and Wales which are also used in that Act have the same meanings as in that Act."

VALID FROM 30/12/2005

99 In subsection (6)—
(a) the words "in its application to Scotland" are omitted,
(b) after "expressions" there is inserted " used in this section in its application to Scotland ".

PROSPECTIVE

100 Section 14 (restriction on bringing children into the United Kingdom for adoption) is omitted.

VALID FROM 30/12/2005

101 In section 16(1) (devolution: Wales), the words ", or section 17 or 56A of the 1976 Act," are omitted.

VALID FROM 30/12/2005

The Access to Justice Act 1999 (c. 22)

102 In Schedule 2 to the Access to Justice Act 1999 (Community Legal Service: excluded services), in paragraph 2(3)(c)—
(a) for "section 27 or 28 of the Adoption Act 1976" there is substituted " section 36 of the Adoption and Children Act 2002 ",
(b) for "an order under Part II or section 29 or 55" there is substituted " a placement order or adoption order (within the meaning of the Adoption and Children Act 2002) or an order under section 41 or 84 ".

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The Care Standards Act 2000 (c. 14)

103 The Care Standards Act 2000 is amended as follows.

Commencement Information

I11 Sch. 3 para. 103 in force at 25.2.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(1)(b)**

VALID FROM 30/12/2005

104 In section 4 (basic definitions), in subsection (7), for "the Adoption Act 1976" there is substituted " the Adoption and Children Act 2002 ".

105 At the end of section 5 (registration authorities) there is inserted—

"(2) This section is subject to section 36A."

Commencement Information

I12 Sch. 3 para. 105 in force at 25.2.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(1)(b)**

106 In section 11 (requirement to register), in subsection (3), for "reference in subsection (1) to an agency does" there is substituted " references in subsections (1) and (2) to an agency do ".

Commencement Information

I13 Sch. 3 para. 106 in force at 25.2.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(1)(b)**

VALID FROM 30/12/2005

107 In section 14 (2) (offences conviction of which may result in cancellation of registration), for paragraph (d) there is substituted—

"(d) an offence under regulations under section 1(3) of the Adoption (Intercountry Aspects) Act 1999,

(e) an offence under the Adoption and Children Act 2002 or regulations made under it".

VALID FROM 30/12/2005

108 In section 16(2) (power to make regulations providing that no application for registration may be made in respect of certain agencies which are unincorporated bodies), "or a voluntary adoption agency" is omitted.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/12/2005

109 In section 22(10) (disapplication of power to make regulations in the case of voluntary adoption agencies), at the end there is inserted. " or adoption support agencies "

VALID FROM 30/04/2003

110 In section 23 (standards), at the end of subsection (4)(d) there is inserted "". " or proceedings against a voluntary adoption agency for an offence under section 9(4) of the Adoption Act 1976 or section 9 of the Adoption and Children Act 2002 "

VALID FROM 30/12/2005

111 In section 31 (inspections by authorised persons), in subsection (3)(b), for "section 9(2) of the Adoption Act 1976" there is substituted " section 9 of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

112 In section 43 (introductory), in subsection (3)(a)—

(a) for "the Adoption Act 1976" there is substituted " the Adoption and Children Act 2002 ",

(b) after "children" there is inserted " or the provision of adoption support services (as defined in section 2(6) of the Adoption and Children Act 2002) ".

VALID FROM 30/12/2005

113 In section 46 (inspections: supplementary), in subsection (7)(c), for "section 9(3) of the Adoption Act 1976" there is substituted " section 9 of the Adoption and Children Act 2002 ".

VALID FROM 30/12/2005

114 In section 48 (regulation of fostering functions), at the end of subsection (1) there is inserted—

"(f) as to the fees or expenses which may be paid to persons assisting local authorities in making decisions in the exercise of such functions".

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VALID FROM 30/12/2005

115 In section 55(2)(b) (definition of "social care worker"), for "or a voluntary adoption agency" there is substituted " , a voluntary adoption agency or an adoption support agency ".

VALID FROM 30/12/2005

116 In section 121 (general interpretation)—

(a) in subsection (1), in the definition of "voluntary organisation", for "the Adoption Act 1976" there is substituted " the Adoption and Children Act 2002 ",

(b) in subsection (13), in the appropriate place in the table there is inserted — " Adoption support agency Section 4 ".

VALID FROM 30/12/2005

117 In Schedule 4 (minor and consequential amendments), paragraph 27(b) is omitted.

VALID FROM 28/11/2003

The Criminal Justice and Court Services Act 2000 (c. 43)

118 In section 12(5) of the Criminal Justice and Court Services Act 2000 (meaning of "family proceedings" in relation to CAFCASS), paragraph (b) (supervision orders under the 1989 Act) and the preceding "and" are omitted.

SCHEDULE 4

Section 139

Transitional and transitory provisions and savings

VALID FROM 30/12/2005

General rules for continuity

1 (1) Any reference (express or implied) in Part 1 or any other enactment, instrument or document to—

(a) any provision of Part 1, or

(b) things done or falling to be done under or for the purposes of any provision of Part 1,

must, so far as the nature of the reference permits, be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision repealed by this Act had effect, a reference to that

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corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision.

(2) Any reference (express or implied) in any enactment, instrument or document to—
(a) a provision repealed by this Act, or
(b) things done or falling to be done under or for the purposes of such a provision,

must, so far as the nature of the reference permits, be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision of Part 1 has effect, a reference to that corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision.

VALID FROM 30/12/2005

General rule for old savings

2 (1) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings.

(2) The repeal by this Act of a saving made on the previous repeal of an enactment does not affect the operation of the saving in so far as it is not specifically reproduced in this Act but remains capable of having effect.

Adoption support services

3 (1) The facilities to be provided by local authorities as part of the service maintained under section 1(1) of the Adoption Act 1976 (c. 36) include such arrangements as the authorities may be required by regulations to make for the provision of adoption support services to prescribed persons.

(2) Regulations under sub-paragraph (1) may require a local authority—
(a) at the request of a prescribed person, to carry out an assessment of his needs for adoption support services,
(b) if, as a result of the assessment, the authority decide that he has such needs, to decide whether to provide any such services to him,
(c) if the authority decide to provide any such services to a person, and the circumstances fall within a description prescribed by the regulations, to prepare a plan in accordance with which the services are to be provided to him and keep the plan under review.

(3) Subsections (6) and (7) (except paragraph (a)) of section 4 of this Act apply to regulations under sub-paragraph (1) as they apply to regulations made by virtue of that section.

(4) Section 57(1) of the Adoption Act 1976 (prohibited payments) does not apply to any payment made in accordance with regulations under sub-paragraph (1).

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I14 Sch. 4 para. 3 in force at 10.3.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(2)(a)**

Regulation of adoption agencies

4 (1) In section 9 of the Adoption Act 1976—

(a) for "Secretary of State" in subsections (2) and (3) there is substituted " appropriate Minister ", and

(b) at the end of that section there is inserted—

"(5) In this section and section 9A, "the appropriate Minister" means—

(a) in relation to England, the Secretary of State,

(b) in relation to Wales, the National Assembly for Wales,

and in relation to England and Wales, means the Secretary of State and the Assembly acting jointly."

(2) Until the commencement of the repeal by this Act of section 9(2) of the Adoption Act 1976, section 36A of the Care Standards Act 2000 (c. 14) (inserted by section 16 of this Act) is to have effect as if, after "2002", there were inserted " or under section 9(2) of the Adoption Act 1976 ".

Commencement Information

I15 Sch. 4 para. 4(1) in force at 3.2.2003 by S.I. 2003/288, **art. 2(b)**

I16 Sch. 4 para. 4(2) in force at 25.2.2003 by S.I. 2003/366, **art. 2(1)(c)**

VALID FROM 01/12/2003

Independent review mechanism

5 After section 9 of the Adoption Act 1976 (c. 36) there is inserted—

"**9A Independent review of determinations**

(1) Regulations under section 9 may establish a procedure under which any person in respect of whom a qualifying determination has been made by an adoption agency may apply to a panel constituted by the appropriate Minister for a review of that determination.

(2) The regulations must make provision as to the description of determinations which are qualifying determinations for the purposes of subsection (1).

(3) The regulations may include provision as to—

(a) the duties and powers of a panel (including the power to recover the costs of a review from the adoption agency by which the determination reviewed was made),

(b) the administration and procedures of a panel,

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(c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment),

(d) the payment of expenses of members of a panel,

(e) the duties of adoption agencies in connection with reviews conducted under the regulations,

(f) the monitoring of any such reviews.

(4) The appropriate Minister may make an arrangement with an organisation under which functions in relation to the panel are performed by the organisation on his behalf.

(5) If the appropriate Minister makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by the appropriate Minister.

(6) The arrangement may include provision for payments to be made to the organisation by the appropriate Minister.

(7) Where the appropriate Minister is the National Assembly for Wales, subsections (4) and (6) also apply as if references to an organisation included references to the Secretary of State.

(8) In this section, "organisation" includes a public body and a private or voluntary organisation."

VALID FROM 30/12/2005

Pending applications for freeing orders

6 Nothing in this Act affects any application for an order under section 18 of the Adoption Act 1976 (freeing for adoption) where—

(a) the application has been made and has not been disposed of immediately before the repeal of that section, and

(b) the child in relation to whom the application is made has his home immediately before that repeal with a person with whom he has been placed for adoption by an adoption agency.

VALID FROM 30/12/2005

Freeing orders

7 (1) Nothing in this Act affects any order made under section 18 of the Adoption Act 1976 (c. 36) and—

(a) sections 19 to 21 of that Act are to continue to have effect in relation to such an order, and

(b) Part 1 of Schedule 6 to the Magistrates' Courts Act 1980 (c. 43) is to continue to have effect for the purposes of an application under section 21 of the Adoption Act 1976 in relation to such an order.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Section 20 of that Act, as it has effect by virtue of this paragraph, is to apply as if, in subsection (3)(c) after "1989" there were inserted—

"(iia) any care order, within the meaning of that Act".

(3) Where a child is free for adoption by virtue of an order made under section 18 of that Act, the third condition in section 47(6) is to be treated as satisfied.

VALID FROM 30/12/2005

Pending applications for adoption orders

8 Nothing in this Act affects any application for an adoption order under section 12 of the Adoption Act 1976 where—

(a) the application has been made and has not been disposed of immediately before the repeal of that section, and

(b) the child in relation to whom the application is made has his home immediately before that repeal with a person with whom he has been placed for adoption by an adoption agency.

PROSPECTIVE

Notification of adoption applications

9 Where a notice given in respect of a child by the prospective adopters under section 22(1) of the Adoption Act 1976 is treated by virtue of paragraph 1(1) as having been given for the purposes of section 44(2) in respect of an application to adopt the child, section 42(3) has effect in relation to their application for an adoption order as if for "six months" there were substituted " twelve months ".

VALID FROM 01/06/2003

Adoptions with a foreign element

10 In section 13 of the Adoption Act 1976 (child to live with adopters before order is made)—

(a) in subsection (1)(a), at the beginning there is inserted " (subject to subsection (1A)) ",

(b) after subsection (1) there is inserted—

"(1A) Where an adoption is proposed to be effected by a Convention adoption order, the order shall not be made unless at all times during the preceding six months the child had his home with the applicants or one of them.",

(c) in subsection (2), after "subsection (1)" there is inserted " or (1A) ",

(d) subsection (4) is omitted.

Status: *Point in time view as at 10/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Adoption and Children Act 2002 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 01/06/2003

11 In section 56 of the Adoption Act 1976 (restriction on removal of children for adoption outside Great Britain)—

(a) in subsection (1), "not being a parent or guardian or relative of the child" is omitted,

(b) at the end of that section there is inserted—

"(4) Regulations may provide for subsection (1) to apply with modifications, or not to apply, if—

(a) the prospective adopters are parents, relatives or guardians of the child in question (or one of them is), or

(b) the prospective adopter is a step-parent of the child,

and any prescribed conditions are met.

(5) On the occasion of the first exercise of the power to make regulations under subsection (4)—

(a) the regulations shall not be made unless a draft of the regulations has been approved by a resolution of each House of Parliament, and

(b) accordingly section 67(2) does not apply to the statutory instrument containing the regulations.

(6) In this section, "prescribed" means prescribed by regulations and "regulations" means regulations made by the Secretary of State, after consultation with the National Assembly for Wales."

VALID FROM 01/04/2003

12 For section 56A of the Adoption Act 1976 (c. 36) there is substituted—

"**56A Restriction on bringing children into the United Kingdom**

(1) This section applies where a person who is habitually resident in the British Islands (the "British resident")—

(a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption by the British resident, or

(b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of six months ending with that time.

The references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to a child adopted, by the British resident and another person.

(2) But this section does not apply if the child is intended to be adopted under a Convention adoption order.

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(3) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outside the British Islands, whether or not the adoption is—

(a) an adoption within the meaning of Part IV of this Act, or

(b) a full adoption (within the meaning of section 39(3A)).

(4) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—

(a) to apply to an adoption agency (including an adoption agency within the meaning of section 1 of the Adoption (Scotland) Act 1978 or Article 3 of the Adoption (Northern Ireland) Order 1987) in the prescribed manner for an assessment of his suitability to adopt the child, and

(b) to give the agency any information it may require for the purpose of the assessment.

(5) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.

(6) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may provide for any provision of Part II to apply with modifications or not to apply.

(7) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, he is guilty of an offence if—

(a) he has not complied with any requirement imposed by virtue of subsection (4), or

(b) any condition required to be met by virtue of subsection (5) is not met,

before that time, or before any later time which may be prescribed.

(8) A person guilty of an offence under this section is liable—

(a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.

(9) Regulations may provide for the preceding provisions of this section not to apply if—

(a) the adopters or (as the case may be) prospective adopters are natural parents, natural relatives or guardians of the child in question (or one of them is), or

(b) the British resident in question is a step-parent of the child,

and any prescribed conditions are met.

(10) On the occasion of the first exercise of the power to make regulations under subsection (9)—

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(a) the regulations shall not be made unless a draft of the regulations has been approved by a resolution of each House of Parliament, and

(b) accordingly section 67(2) does not apply to the statutory instrument containing the regulations.

(11) In this section, "prescribed" means prescribed by regulations and "regulations" means regulations made by the Secretary of State, after consultation with the National Assembly for Wales."

VALID FROM 01/06/2003

13 In section 72 of the Adoption Act 1976 (c. 36) (interpretation), subsection (3B) is omitted.

VALID FROM 01/06/2003

Advertising

14 In section 58 of the Adoption Act 1976 (c. 36) (restrictions on advertisements)—

(a) after subsection (1) there is inserted—

"(1A) Publishing an advertisement includes doing so by electronic means (for example, by means of the internet).",

(b) in subsection (2), for the words following "conviction" there is substituted " to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both ".

PROSPECTIVE

[F26]15 . . . . . .

Textual Amendments

F26 Sch. 4 paras. 10-16 repealed (30.12.2005) by Adoption and Children Act 2002 (c. 38), s. 148(1), **Sch. 5** (with Sch. 4 paras. 2, 6-8); S.I. 2005/2897, art. 2(b)

PROSPECTIVE

[F26]16 . . . . . .

Textual Amendments

F26 Sch. 4 paras. 10-16 repealed (30.12.2005) by Adoption and Children Act 2002 (c. 38), s. 148(1), **Sch. 5** (with Sch. 4 paras. 2, 6-8); S.I. 2005/2897, art. 2(b)

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VALID FROM 30/12/2005

Status

17 (1) Section 67—

(a) does not apply to a pre-1976 instrument or enactment in so far as it contains a disposition of property, and

(b) does not apply to any public general Act in its application to any disposition of property in a pre-1976 instrument or enactment.

(2) Section 73 applies in relation to this paragraph as if this paragraph were contained in Chapter 4 of Part 1; and an instrument or enactment is a pre-1976 instrument or enactment for the purposes of this Schedule if it was passed or made at any time before 1st January 1976.

VALID FROM 30/12/2005

18 Section 69 does not apply to a pre-1976 instrument.

VALID FROM 30/12/2005

19 In section 70(1), the reference to Part 3 of the Family Law Reform Act 1987 (c. 42) includes Part 2 of the Family Law Reform Act 1969 (c. 46).

VALID FROM 30/12/2005

Registration of adoptions

20 (1) The power of the court under paragraph 4(1) of Schedule 1 to amend an order on the application of the adopter or adopted person includes, in relation to an order made before 1st April 1959, power to make any amendment of the particulars contained in the order which appears to be required to bring the order into the form in which it would have been made if paragraph 1 of that Schedule had applied to the order.

(2) In relation to an adoption order made before the commencement of the Adoption Act 1976 (c. 36), the reference in paragraph 4(3) of that Schedule to paragraph 1(2) or (3) is to be read—

(a) in the case of an order under the Adoption of Children Act 1926 (c. 29), as a reference to section 12(3) and (4) of the Adoption of Children Act 1949 (c. 98),

(b) in the case of an order under the Adoption Act 1950 (c. 26), as a reference to section 18(3) and (4) of that Act,

(c) in the case of an order under the Adoption Act 1958 (c. 5), as a reference to section 21(4) and (5) of that Act.

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VALID FROM 30/12/2005

The Child Abduction Act 1984 (c. 37)

21 Paragraph 43 of Schedule 3 does not affect the Schedule to the Child Abduction Act 1984 in its application to a child who is the subject of—

(a) an order under section 18 of the Adoption Act 1976 freeing the child for adoption,

(b) a pending application for such an order, or

(c) a pending application for an order under section 12 of that Act.

VALID FROM 30/12/2005

The Courts and Legal Services Act 1990 (c. 41)

22 Paragraph 80 of Schedule 3 does not affect section 58A(2)(b) of the Courts and Legal Services Act 1990 in its application to proceedings under the Adoption Act 1976 (c. 36).

VALID FROM 30/12/2005

The Children (Scotland) Act 1995 (c. 36)

23 Paragraph 84 of Schedule 3 does not affect section 86(6) of the Children (Scotland) Act 1995 in its application to a child who becomes the subject of an order under section 18 or 55 of the Adoption Act 1976 by virtue of an application made before the repeal of that section.

VALID FROM 28/11/2003

SCHEDULE 5

Section 139

REPEALS

. . . . . .

SCHEDULE 6

Section 147

GLOSSARY

In this Act, the expressions listed in the left-hand column below have the meaning given by, or are to be interpreted in accordance with, the provisions of this Act or (where stated) of the 1989 Act listed in the right-hand column.

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Expression	***Provision***
the 1989 Act	section 2(5)
Adopted Children Register	section 77
Adoption and Children Act Register	section 125
adoption (in relation to Chapter 4 of Part 1)	section 66
adoption agency	section 2(1)
adoption agency placing a child for adoption	section 18(5)
Adoption Contact Register	section 80
adoption order	section 46(1)
Adoption Service	section 2(1)
adoption society	section 2(5)
adoption support agency	section 8
adoption support services	section 2(6)
appointed day (in relation to Chapter 4 of Part 1)	section 66(2)
appropriate Minister	section 144
Assembly	section 144
body	section 144
by virtue of	section 144
care order	section 105(1) of the 1989 Act
child	sections 49(5) and 144
child assessment order	section 43(2) of the 1989 Act
child in the care of a local authority	section 105(1) of the 1989 Act
child looked after by a local authority	section 22 of the 1989 Act
child placed for adoption by an adoption agency	section 18(5)
child to be adopted, adopted child	section 49(5)
consent (in relation to making adoption orders or placing for adoption)	section 52
the Convention	section 144
Convention adoption	section 66(1)(c)
Convention adoption order	section 144
Convention country	section 144
couple	section 144(4)
court	section 144
disposition (in relation to Chapter 4 of Part 1)	section 73

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enactment	section 144
fee	section 144
guardian	section 144
information	section 144
interim care order	section 38 of the 1989 Act
local authority	section 144
local authority foster parent	section 23(3) of the 1989 Act
Northern Irish adoption agency	section 144
Northern Irish adoption order	section 144
notice	section 144
notice of intention to adopt	section 44(2)
overseas adoption	section 87
parental responsibility	section 3 of the 1989 Act
partner, in relation to a parent of a child	section 144(7)
placement order	section 21
placing, or placed, for adoption	sections 18(5) and 19(4)
prohibited steps order	section 8(1) of the 1989 Act
records (in relation to Chapter 5 of Part 1)	section 82
registered adoption society	section 2(2)
registers of live-births (in relation to Chapter 5 of Part 1)	section 82
registration authority (in Part 1)	section 144
regulations	section 144
relative	section 144, read with section 1(8)
residence order	section 8(1) of the 1989 Act
rules	section 144
Scottish adoption agency	section 144(3)
Scottish adoption order	section 144
specific issue order	section 8(1) of the 1989 Act
subordinate legislation	section 144
supervision order	section 31(11) of the 1989 Act
unitary authority	section 144
voluntary organisation	section 2(5)

Status:
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