

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Adoption and Children Act 2002 which received Royal Assent on 7th November 2002. They have been prepared by the Department of Health in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. In December 2000 the Government published a White Paper on adoption (*Adoption – a new approach*; Cm 5017, Department of Health, December 2000). This set out the Government's plans to promote greater use of adoption, improve the performance of the adoption service, and put children at the centre of the adoption process. The White Paper built on the proposals of the Prime Minister's Adoption Review, which were published for consultation in July 2000 (*Prime Minister's Review: Adoption*; Performance and Innovation Unit, July 2000). The White Paper included a commitment to introduce new adoption legislation in 2001.
4. The purpose of the Act is to reform adoption law, to implement the proposals in the White Paper that require primary legislation, and to underpin the Government's programme to improve the performance of the adoption service and promote greater use of adoption. The Act builds on and incorporates the proposals to update adoption legislation set out in the draft Bill published for consultation in 1996 (*Adoption – A Service for Children*; Department of Health and Welsh Office, March 1996), which were themselves the product of the *Review of Adoption Law*; Department of Health and Welsh Office, October 1992, and the White Paper - *Adoption: The Future*; Cm 2288, November 1993.
5. In summary, the Act:
 - aligns adoption law with the relevant provisions of the Children Act 1989 to ensure that the child's welfare is the paramount consideration in all decisions relating to adoption;
 - places a duty on local authorities to maintain an adoption service, which must include making and participating in arrangements for the adoption of children and for the provision of adoption support services (to include financial support);
 - provides a new right to an assessment of needs for adoption support services for adoptive families and others;
 - sets out a new regulatory structure for adoption support agencies, requiring them to register under Part 2 of the Care Standards Act 2000, to ensure that adoption support services are provided to a high standard;

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- enables the appropriate Minister (defined in [section 144](#)) to establish an independent review mechanism in relation to qualifying adoption agency determinations;
- makes provision for the process of adoption and the conditions for the making of adoption orders, including new measures for placement for adoption with consent and placement orders to replace the existing provisions in the Adoption Act 1976 for freeing orders;
- provides for adoption orders to be made in favour of single people, married couples and unmarried couples;
- provides for a new and more consistent approach to access to information held in adoption agency records and by the Registrar General about adoptions which take place after the Act comes into force, by ensuring that the release of this sensitive information about adopted people and their birth relatives is protected and that its disclosure is subject to safeguards;
- provides for adoption support agencies to have a role in assisting adopted adults to obtain information about their adoption and to facilitate contact between them and their birth relatives where the person was adopted before the Act comes into force;
- incorporates with amendments the Adoption (Intercountry Aspects) Act 1999 (other than sections 1, 2 and 7, and Schedule 1), as respects England and Wales;
- provides additional restrictions on bringing a child into the United Kingdom in connection with adoption, aimed at ensuring that British residents follow the appropriate procedures where they adopt a child overseas or bring a child into the United Kingdom for the purposes of adoption;
- provides for restrictions on arranging adoptions and advertising children for adoption (through traditional media and electronically) other than through adoption agencies, and prohibits certain payments in connection with adoption;
- makes provision enabling the Secretary of State to establish an Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters;
- makes provision obliging courts to draw up timetables for resolving adoption cases without delay;
- amends the Children Act 1989 to provide that an unmarried father acquires parental responsibility where he and the child's mother register the birth of their child together;
- amends the Children Act 1989 to introduce a new special guardianship order, intended to provide permanence for children for whom adoption is not appropriate;
- amends the Children Act 1989 to make provision in respect of local authorities' power to provide accommodation for children in need under section 17 of that Act;
- amends the Children Act 1989 to amend, and widen the application of, the procedure for making representations under that Act and to impose a duty on local authorities to make arrangements for the provision of advocacy services to children or young people making or intending to make representations;
- amends the Children Act 1989 to provide that regulations may require a local authority to review the care plan of a looked after child;
- amends the definition of "harm" in the Children Act 1989 to make clear that harm includes any impairment of the child's health or development as a result of witnessing the ill-treatment of another person;

- amends the Children Act 1989 to make the application for a placement order specified proceedings and to enable rules of court to make applications for section 8 orders specified proceedings and to provide for the representation of children in proceedings.

Changes to the Adoption Service

6. The White Paper set out the Government's proposals to encourage wider use of adoption, particularly of children looked after by local authorities. Each year there are about 5,000 adoptions in England and Wales. More than half of all adoptions are of children who have been looked after by local authorities. The Government has set a target of a 40% increase in adoptions of looked after children in England by 2004/5. The measures to improve adoption support included in the Act are intended to encourage more people to come forward to adopt and to help adoptive placements to succeed. The Act places a duty on local authorities to make arrangements for the provision of adoption support services, as specified in regulations. This duty will be used to deliver the new framework for adoption support services (including financial support) promised in the White Paper. It also provides a new right to request and receive an assessment of needs for adoption support services. The assessment will link with other local authority functions and local education authority and health services, where the needs for such services are identified, with the aim of identifying a co-ordinated package of support to help adoptions succeed.
7. To encourage more people to apply to adopt and to build confidence in the adopter assessment process, the White Paper committed the Government to provide an independent review where an adoption agency intends to turn down a prospective adopter's application. The Act includes powers enabling the appropriate Minister to establish a mechanism, which may be run by an independent body, to review qualifying adoption agency determinations. The intention is that the independent review mechanism will review, at a prospective adopter's request, applications that adoption agencies have indicated they are minded to turn down. It is also intended to use the independent review mechanism to review qualifying adoption agency determinations about the disclosure of information concerning a person's adoption. The mechanism could be used to review other determinations made by adoption agencies.

Placement for adoption

8. The Act changes the process of adoption itself. The Government believes that the needs and welfare of children should be at the centre of the adoption process. The Act makes the welfare of the child the paramount consideration for courts and adoption agencies in all decisions relating to adoption, including in deciding whether to dispense with a birth parent's consent to adoption. It provides a welfare checklist which must be applied by the court and adoption agencies. The paramouncy test brings adoption legislation into line with the Children Act 1989.
9. The Act establishes new legal processes for placing a child for adoption through an adoption agency. Two routes are provided: birth parents may give consent to placement or a local authority may secure a placement order from the court, authorising it to place a child with adopters whom they select. A local authority must apply for a placement order where it is satisfied that a child should be adopted, but the parents do not consent to placement or have withdrawn such consent. The placement provisions build on and implement the recommendations of the Review of Adoption Law (see paragraph 4).
10. The intention is to ensure that decisions about whether adoption is the right option for the child, whether the birth parents consent and, if not, whether parental consent should be dispensed with are taken earlier in the adoption process than at present, with court involvement where necessary. The system aims to provide greater certainty and stability for children by dealing as far as possible with consent to placement for adoption before they have been placed; to minimise the uncertainty for prospective adopters,

who possibly face a contested court hearing at the adoption order stage; and to reduce the extent to which birth families are faced with a ‘fait accompli’ at the final adoption hearing.

Adoption orders

11. Under the Adoption Act 1976, single people may adopt and only married couples may adopt jointly. The Act provides that adoption orders may be made in favour of single people, married couples and unmarried couples. A definition of “couple”, which covers both married and unmarried couples, is provided in [section 144](#). The definition applies solely for the purposes of this Act.

Disclosure of information about a person’s adoption

12. The Act also makes new provision for the disclosure to adopted people of information held by the adoption agency in connection with their adoption, and for access to their birth records. These provisions also cover the release of adoption agency information to birth relatives and others. The Act provides for a single point of access to identifying information through adoption agencies, as the bodies best placed to provide the support and counselling needed for this sensitive task. The new regulatory framework for the disclosure of information about a person’s adoption seeks to recognise the interests of all those involved. Regulations may be made under the Act providing for the exercise of discretion by adoption agencies in this area to be reviewed by an independent panel (see paragraph 7).
13. This scheme would only apply to adoptions that take place after the Act has been brought into force. For adoptions which took place prior to the date of the coming into force of [sections 56 to 65](#), provision will be made under [section 98](#) (see paragraphs 244-249) for adoption support agencies registered to provide intermediary services to assist adopted adults to obtain information about their adoption and to facilitate contact between them and their birth relatives.

Intercountry adoption

14. The Act incorporates most of the provisions of the Adoption (Intercountry Aspects) Act 1999 (the 1999 Act), which will largely be repealed in respect of England and Wales when the Act is implemented. The 1999 Act provides a statutory basis for the regulation of intercountry adoption, enables the United Kingdom to ratify the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and introduces sanctions against those who bring children into the United Kingdom without following the proper procedures. The 1999 Act also clarifies that local authorities have a duty to provide, or arrange to provide, an intercountry adoption service and provides that children who are the subject of a Convention adoption will receive British nationality automatically.
15. To ensure that people living in the United Kingdom wishing to adopt a child from overseas follow the appropriate approval procedure, whether they adopt the child abroad or in the United Kingdom, the Act enhances the safeguards in the 1999 Act. It incorporates the restriction in that Act on bringing a child into the United Kingdom for the purpose of adoption by a British resident, and provides a new restriction where a child is brought into the United Kingdom if he has been adopted by a British resident under an adoption order made under the law of a country outside the British Islands, which is not a Hague Convention adoption, within the previous six months. It also provides for a Crown Court to hear these cases and provides a new penalty in cases where the magistrates’ court refers the case to a Crown Court or the defendant enters a plea of not guilty and elects for a Crown Court trial. In such cases, the maximum penalty will be 12 months’ imprisonment or an unlimited fine, or both.

Safeguards for the adoption process

16. The Act reaffirms with amendment existing safeguards under the Adoption Act 1976 that restrict who can lawfully arrange adoptions, and advertise about adoption. This includes advertising about adoption through traditional media and electronically. It also provides restrictions on the preparation of certain reports and prohibits certain payments or rewards in connection with adoption.

Measures to tackle delay

17. The Act includes measures intended to tackle delays in the adoption process. It makes provision to enable the Secretary of State to establish an Adoption and Children Act Register to suggest links between children waiting to be adopted and approved prospective adopters. The Register is intended to reduce delay in matching children with adoptive families. The Act also includes measures requiring courts to draw up timetables for resolving adoption cases without delay, and to give directions to ensure the timetable is adhered to.

Special Guardianship

18. The Government promised in the White Paper to develop a new legal option called 'special guardianship'. This is intended to meet the needs of children for whom adoption is not appropriate, but who cannot return to their birth parents and could benefit from the permanence provided by a legally secure family placement. For example, some older children (who may, for instance, be being looked after in long term foster placements) do not wish to be adopted and have their legal relationship with their parents severed, but could benefit from greater security and permanence. Adoption may also not be the best option for some children being cared for on a permanent basis by members of their wider family. Some ethnic minority communities have religious or cultural difficulties with adoption in the form provided for in the law of England and Wales.
19. The Act amends the Children Act 1989 to provide for the new special guardianship order. It sets out who may apply for an order, the circumstances in which orders may be made and their nature and effect. The intention is that, in order to provide the child with the stability he needs, the special guardian has clear responsibility for all the day to day decisions about caring for the child or young person and for taking the decisions about his upbringing. But, unlike adoption, there is the possibility of discharge or variation of the order, and the child's legal relationship with his birth parents is not severed. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited. Special guardians will have access to a range of support services under procedures similar to those provided for adoption support.

THE ACT

20. The Act replaces the Adoption Act 1976 (except provisions about the status of children already adopted) and reforms the existing legal framework for domestic and intercountry adoption in England and Wales. It also consolidates some of the provisions in the Adoption (Intercountry Aspects) Act 1999. In the Adoption (Intercountry Aspects) Act 1999, sections 1 and 2 (regulations to give effect to the Convention and Central Authorities), section 7 (amendments to the British Nationality Act 1981) and Schedule 1 (the text of the Hague Convention so far as material), are to continue in force for England and Wales, as well as Scotland. The remaining provisions as respects England and Wales will cease to apply in England and Wales and will instead be incorporated into the Act. The Act will affect all adoptions and arrangements for the adoption of children in England and Wales and all adoption applications from persons resident and settled in England and Wales who seek to adopt children living abroad. Some parts of the Act extend to Scotland and Northern Ireland. It is intended that the current mutual recognition of adoption and cross border placement for adoption between England, Wales, Scotland and Northern Ireland will continue.

21. The Act has three Parts:

- **Part 1** sets out the framework of adoption law for England and Wales. Chapter 1 provides for the welfare of the child to be paramount (*section 1*). Chapter 2 covers the adoption service. It places a duty on local authorities in England and Wales to maintain an adoption service, which includes making and participating in arrangements for the adoption of children and for the provision of adoption support services (*section 3*); provides a statutory right to request an assessment for adoption support services (*section 4*); amends Part 2 of the Care Standards Act 2000 to provide for the registration of adoption support agencies (*section 8*); enables the appropriate Minister to establish a new independent review mechanism to consider determinations made by adoption agencies about the suitability of prospective adopters and the disclosure of protected information (*section 12*); provides for default powers (*section 14*), inspection (*section 15*) and inquiries (*section 17*). Chapter 3 covers placement for adoption and adoption orders. It introduces placement by consent and placement orders (*sections 18 to 29*); makes provision for the removal of children who are or may be placed for adoption (*sections 30 to 35*) and makes provision for adoption orders (*sections 46 to 51*). It also makes provision for disclosure of information prior to and following a person's adoption (*sections 54, 56 to 65 and 98*). Chapter 4 covers the status of adopted children (*sections 66 to 76*). Chapter 5 makes provision for the Adopted Children Register (*sections 77 to 79*) and the Adoption Contact Register (*sections 80 and 81*). Chapter 6 makes provision for intercountry adoption (*sections 83 to 91*). Chapter 7 covers miscellaneous provisions. It makes provision for offences relating to arranging adoptions (*section 93*), reports (*section 94*) and making certain payments (*section 95*).
- **Part 2** makes amendments to the Children Act 1989; it provides for the acquisition of parental responsibility by an unmarried father who jointly registers with the mother their child's birth (*section 111*); introduces a more straightforward process for step-parents to acquire parental responsibility either through the courts or with consent (*section 112*); provides for a local authority foster parent to apply for a section 8 order if the child has lived with him for one year rather than three years (*section 113*); provides for enhanced residence orders (*section 114*) and special guardianship (*section 115*); makes provision in respect of local authorities' powers to provide accommodation for children in need (*section 116*); amends the complaints procedure by allowing for regulations to impose time limits for the making of representations and establish an informal resolution stage, and extending the procedure to some services provided under Parts 4 and 5 of the Children Act 1989 and under this Act (*section 117*); makes provision regarding care plans and the review of plans for looked after children (*sections 118 and 121*); places a duty on local authorities to make provision for the arrangement of advocacy services for looked after children and young people leaving care who wish to make a complaint under the Children Act 1989 (*section 119*); amends the definition of "harm" in that Act (*section 120*) and provides for the representation of children in court proceedings (*section 122*).
- **Part 3** makes miscellaneous provision, including on advertising (*sections 123 and 124*), and establishing the Adoption and Children Act Register (*sections 125 to 131*).

COMMENTARY ON SECTIONS

Part 1 – Adoption

Chapter 1 - Introductory

Section 1: Considerations applying to the exercise of powers

22. *Section 1* is an overarching provision that will apply whenever a court or an adoption agency (a local authority or a registered adoption society) is coming to any decision relating to the adoption of a child. This includes any decision by the court about whether or not to dispense with parental consent to adoption or to make a contact order in respect of a child under section 26. In line with the commitment made by the Government in the White Paper *Adoption: a new approach* it introduces into adoption law principles already in the Children Act 1989. This was a central recommendation of the Review of Adoption Law. The paramount consideration of the court or agency in any decision is the child's welfare (*subsection (2)*). This brings the welfare test into line with that in the Children Act 1989, with the important addition that the court or agency must consider the child's welfare throughout his life, in recognition of the lifelong implications of adoption. The court or agency must also bear in mind that in general any delay is likely to prejudice the child's welfare (*subsection (3)*).
23. A welfare checklist is set out in *subsection (4)* and must be applied by the court or agency in determining the best interests of the child in any decision relating to adoption. This is modelled on the equivalent provision in the Children Act 1989, but is tailored to address the particular circumstances of adoption. It includes a requirement to have regard to the child's ascertainable wishes and feelings about the decision (having regard to his age and understanding) and to his particular needs (for example, physical or educational). It also obliges the court or agency to have regard to the relationship the child has with his relatives, the prospects of, and benefits to, the child of this relationship continuing, the ability of his relatives to provide the child with a secure home and to meet his needs, and their views concerning the decision relating to the adoption of the child. 'Relative' includes the child's mother and father – see *subsection (8)*. *Subsection (5)* provides that in placing a child for adoption, the agency must give due consideration to the child's religious persuasion, racial origin, cultural and linguistic background. This is in line with the duty placed on local authorities by section 22(5)(c) of the Children Act 1989, when they take any decision about a 'looked after' child, including where they should be placed.
24. In taking any decision relating to the adoption of a child the court or agency will have to consider the whole range of powers available to it under the Act and the Children Act 1989 and a court may only make an order where it considers that it would be better for the child than making no order (*subsection (6)*).

Chapter 2 – The Adoption Service

25. *Chapter 2* makes provision for the structure of the adoption service. Some of the sections re-model provisions of the Adoption Act 1976. However, this Chapter also underpins some important areas of new policy dealing with adoption support services (including financial support) and independent reviews of qualifying determinations (see *section 12*). Registration of voluntary organisations which are adoption societies is to be undertaken by the registration authority (the National Care Standards Commission where the principal office is in England and the National Assembly where the principal office is in Wales) under Part 2 of the Care Standards Act 2000. Chapter 2 amends the Care Standards Act 2000 to make provision for the registration of adoption support agencies (see *section 8*) and to clarify the distribution of functions between the registration authorities given that registered adoption societies will be cross-border bodies (see *section 16*).

Section 2: Basic definitions

26. *Section 2* sets out some basic definitions, including the definition of an “adoption society” and a “registered adoption society”, which must be a body corporate. An adoption society is a body whose functions consist of or include making arrangements for the adoption of children. They may also include the provision of adoption support services. *Subsection (1)* provides that the services provided under *section 3(1)* are to be known as “the Adoption Service” and that a local authority or a registered adoption society may be referred to as an “adoption agency”. Section 13(3) of the Care Standards Act 2000 provides for the registration authority to grant an application for registration either unconditionally or subject to such conditions as it thinks fit. A registered adoption society is treated as registered in respect of any facility of the Adoption Service for the purposes of the Act unless it is a condition of its registration that it may not provide that facility (*subsection (3)*). *Subsection (8)* states that the references in this Chapter to adoption are to the adoption of persons wherever they may be habitually resident, effected under the law of any country or territory.
27. *Subsection (6)* provides that adoption support services include counselling, advice and information in relation to adoption. Regulations will set out what other services are to fall within this definition. *Subsection (7)* provides that the Secretary of State must exercise the power under section 2(6)(b) to make regulations so as to secure that local authorities provide financial support.

Section 3: Maintenance of Adoption Service

28. Under *section 3*, each local authority must continue to provide within their area an adoption service, designed to meet the needs of children who may be adopted, their parents and guardians, persons wishing to adopt a child and adopted persons, their parents, natural parents and former guardians. Facilities must include making and participating in arrangements for the adoption of children and arrangements for the provision of adoption support services. In addition to the duty to make arrangements for the provision of adoption support services to the above categories of persons, *subsection (3)(a)* places local authorities under a duty to make arrangements for the provision of adoption support services to persons prescribed in regulations. *Subsection (3)(b)* gives local authorities a power to make arrangements for the provision of adoption support services to other persons.
29. Local authorities may meet their obligation to provide services by ensuring that they are provided by a registered adoption society or such other persons as may be specified in regulations (*subsection (4)*). *Subsection (5)* provides that facilities of the adoption service must be provided in conjunction with other local authority social services and with registered adoption societies in the local authority’s own area, in a co-ordinated manner.
30. The provisions in *sections 2 and 3* will be used to give effect to the new framework for adoption support services including financial support.

Section 4: Assessments etc. for adoption support services

31. A local authority must, under *section 4*, carry out an assessment of the needs for adoption support services of any of the persons mentioned in *section 3(1)* and any other person of a prescribed description, at that person’s request.
32. The assessment for adopted children and their adoptive parents will provide a mechanism to assist them in accessing adoption support services. The assessment is intended to provide a means of facilitating the provision of a planned and co-ordinated support package, drawn from the range of support services to be set out in the new national framework. The assessment will link with other local authority functions and local education authority and health services, where the needs for such services are identified, with the aim of identifying a co-ordinated package of support to help

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adoptions succeed. The right to request and receive an assessment will also apply to the other persons mentioned in [section 3\(1\)](#), and in the regulations made under [section 4\(1\)\(b\)](#). The assessment for these persons will help them to access adoption support services to meet their adoption-related needs. It is intended that the persons prescribed in the regulations made under [section 3\(3\)\(a\)](#) will be included in the regulations made under [section 4\(1\)\(b\)](#).

33. Regulations made under [subsection \(7\)\(a\)](#) may set out the circumstances in which the categories of person prescribed in the regulations made under [subsection \(1\)\(b\)](#) are to have a right to request and receive an assessment. The local authority may also carry out an assessment of the needs of any other person for adoption support services ([subsection \(2\)](#)). Local authorities may call upon the expertise of registered adoption societies or persons prescribed in the regulations made under [section 3\(4\)\(b\)](#) to assist them in carrying out an assessment ([subsection \(3\)](#)).
34. Under [subsection \(4\)](#), where a person's needs for adoption support services are identified in an assessment, the local authority must decide whether to provide adoption support services to that person. Where a decision is taken to provide services, the local authority will be required in prescribed circumstances to prepare a plan for the provision of services ([subsection \(5\)](#)). It is intended that a plan will be required where a number of different adoption support services are being provided, in order to co-ordinate the provision of those services.
35. [Subsections \(6\) and \(7\)](#) provide a power to make provision in regulations about the carrying out of assessments, including considerations to be taken into account during the assessment, preparing and reviewing plans, the provision of services in accordance with plans and reviewing the provision of adoption support services. These regulations will underpin the delivery of the new framework for adoption support including financial support. Regulations under [subsection \(7\)\(b\)](#) may set out the type of assessment which is to be carried out for each of the categories of person mentioned in [section 3\(1\)](#) and anyone else who receives an assessment for adoption support services. Regulations under [subsections \(7\)\(f\) and \(g\)](#) may set out the circumstances in which adoption support services may be provided subject to conditions and the consequences of failure to comply with any such conditions. It is anticipated that regulations could, for example, be used to enable local authorities to specify that financial support must be spent on specified items or services and that sums given may be recouped where they are not spent accordingly. This may be appropriate where a one-off grant is being paid for a specific purpose, but is unlikely to be appropriate for a regular adoption allowance. Regulations made under [subsection \(7\)\(h\)](#) may set out where the responsibility for carrying out an assessment and the provision of any adoption support services lies in cases where a child is placed with an adoptive family living in a different local authority area, together with funding arrangements. This is intended to ensure that it is clear which local authority is to provide adoption support services where a child is placed across local authority boundaries.
36. An assessment for adoption support under this provision may be carried out at the same time as an assessment of that person's needs under any other statutory provision ([subsection \(8\)](#)). This provision clarifies that an assessment for adoption support services may link with other assessments of an individual's needs carried out by the local authority. If at any time during the assessment it appears to the local authority that the person may need NHS services or services which are provided by the local education authority, the local authority must notify the Primary Care Trust or local education authority (or Health Authority or Local Health Board in Wales) ([subsection \(9\)](#)). [Subsections \(8\) and \(9\)](#) are intended to promote the joined up provision of public services in support of adoption. The Primary Care Trust or local education authority (or Health Authority or Local Health Board in Wales) will be best placed to determine whether to provide services in each individual case, in line with their obligations in existing legislation. The Government intends to issue guidance and directions to Primary Care Trusts and local education authorities that they must

inform the local authority where they decide to provide services as a result of such a notification, thereby giving the local authority an overview of the package of services being provided to an individual.

37. *Subsections (10) and (11)* impose a duty upon local authorities to co-operate in the exercise of functions under *section 4* if it is consistent with the exercise of their functions more generally.

Section 5: Local authority plans for adoption services

38. *Section 5* imposes a duty upon local authorities to prepare and publish a plan for the provision of adoption services in their area. Under *subsection (2)* the plan must contain information of a description prescribed in regulations. *Subsection (5)* enables the appropriate Minister to direct the form and manner in which, and the time at which, the plan is to be published by a local authority. The appropriate Minister may also direct who the local authority is to consult in drawing up the plan. A direction may be given by the appropriate Minister under *subsection (4)(a)* that the plan be included in a document specified in the direction, for example a more general plan for the provision of services relating to children within the local authority's area. The intention is as far as possible to incorporate the adoption plan within existing planning mechanisms for children's services, but the provisions provide flexibility to allow for the preparation of separate plans should they be required. There is a power to make regulations relating to the review, modification and substitution of plans (*subsection (3)*).
39. A direction given by the appropriate Minister may modify the requirements in the regulations concerning the information to be included in the plan (*subsection (4)(b)*). Such directions may be given to a particular local authority or to a class of local authorities. It is envisaged that these powers might, for example, be used to facilitate the production of a tailored plan where authorities are working in consortia arrangements. Directions other than those given under *subsection (4)(b)* may be given to a particular local authority, a class of local authorities or to local authorities generally.

Section 6: Arrangements on cancellation of registration

40. *Section 6* empowers the appropriate Minister, where an adoption society has ceased to be registered under Part 2 of the Care Standards Act 2000, to direct that society to make appropriate arrangements for the transfer of its functions relating to children.

Section 7: Inactive or defunct adoption societies etc.

41. *Section 7* empowers the appropriate Minister to direct the relevant local authority to take action, where a registered adoption society is inactive or defunct or has ceased to be registered under Part 2 of the Care Standards Act 2000, and it has not made such arrangements for the transfer of its functions relating to children as are required. It also enables the appropriate Minister to charge the society for the expenses necessarily incurred by him or on his behalf as a result of its failure to make appropriate arrangements.

Section 8: Adoption support agencies

42. *Section 8* amends the Care Standards Act 2000 to make new provision for the registration of adoption support agencies by the registration authority (the National Care Standards Commission in England and the National Assembly in Wales) under Part 2 of that Act. The purpose of these new provisions is to allow agencies other than adoption agencies to provide support services in connection with adoption (for example, specialist birth records counselling, and other services to be set out in the new national framework for adoption support services) while ensuring that organisations operating in this sector are properly regulated. An adoption support agency may be voluntary or profit-making, and both organisations and sole practitioners providing adoption support services will be required to apply for registration as an adoption

support agency. Registration will ensure that adoption support services are provided to an appropriately high standard by staff with the necessary training and expertise.

43. Registered adoption support agencies will be able to provide birth records counselling under paragraph 2(1)(b) of Schedule 2. This will deliver the White Paper commitment to enable bodies other than approved voluntary adoption agencies to provide birth records counselling. It is also the intention that adoption support agencies will have a role in counselling in respect of the disclosure of information from adoption agency records (see in particular [section 63](#)) and in respect of adoptions which took place before the Act is implemented a role in facilitating contact between adopted adults and adult birth relatives (see [section 98](#)). Carrying on or managing an adoption support agency without being registered will be an offence under section 11 of the Care Standards Act 2000.
44. The providers of adoption support services listed in [subsection \(2\)](#) are not included in the definition of an adoption support agency. These providers are not to be registered under Part 2 of the Care Standards Act 2000 as they are already regulated through other means. [Subsection \(2\)\(f\)](#) provides a power to make regulations to add to this list.

Section 9: General power to regulate adoption etc. agencies

45. [Section 9](#) enables regulations to be made in respect of local authorities, voluntary adoption agencies and adoption support agencies. [Subsection \(1\)](#) provides a general power to make regulations for any purpose relating to the exercise by local authorities, voluntary adoption agencies and adoption support agencies of their functions in relation to adoption. [Subsection \(2\)](#) provides that the power to make regulations under [section 9](#) is not limited by the specific powers in [sections 10 to 12, 45, 54 and 56 to 65 and 98](#), nor by any other powers exercisable in respect of local authorities, voluntary adoption agencies or adoption support agencies. [Subsection \(3\)](#) enables regulations to be made under this provision to provide that a person who breaches those regulations commits an offence and is liable on summary conviction (prosecuted in the magistrates' court) to a fine not exceeding level 5 on the standard scale[#]. [Subsection \(4\)](#) defines "voluntary adoption agency" for the purpose of [sections 9 and 10](#).

Section 10: Management etc. of agencies

46. [Section 10](#) amplifies the general regulation-making power in [section 9](#) in relation to the management and general operation of adoption agencies and adoption support agencies. [Subsection \(1\)](#) provides for regulations to be made in respect of local authorities, voluntary adoption agencies and adoption support agencies to ensure that they are suitably managed and staffed, that their premises are fit for the purpose and that adequate arrangements are made for the keeping of information.
47. [Subsection \(2\)](#) provides that regulations may be made under [subsection \(1\)](#) prohibiting a person's appointment to a prescribed post at an adoption agency or an adoption support agency unless they are on a register of social care workers maintained under section 58 of the Care Standards Act 2000.
48. The powers in [subsection \(3\)](#) apply only to voluntary adoption agencies and adoption support agencies. In the case of local authorities such powers are either inappropriate or unnecessary because any child placed, or authorised to be placed, for adoption by a local authority is to be treated as a looked after child. Regulations may be made to ensure that voluntary adoption agencies are managed, and that adoption support agencies are carried on, by persons who are fit to do so, and for the health and welfare of children placed by voluntary adoption agencies (for example children waiting to be adopted who are placed with private foster parents) to be adequately protected. [Subsection \(3\)](#) also

¹ There are five levels to the standard scale for fines, as defined in section 75 of the Criminal Justice Act 1982. A court may impose a fine up to the maximum for the prescribed level. Currently the levels are: level 1 = £200; level 2 = £500; level 3 = £1,000; level 4 = £2,500 and level 5 = £5,000.

provides that regulations may be made imposing requirements regarding the financial position of the agency and the appointment of a manager.

49. *Subsection (4)* sets out that regulations may be made concerning the conduct of voluntary adoption agencies and adoption support agencies, including the provision of facilities and services, the keeping of accounts, notification of events occurring in the agency's premises, changes in the person managing the agency and changes in its ownership, arrangements for running the agency during periods when the manager is absent, and arrangements for dealing with complaints.

Section 11: Fees

50. *Section 11* amplifies the powers in *section 9* in relation to the charging and payment of fees. *Subsection (1)* enables the appropriate Minister to make regulations providing for the fees which may be charged by adoption agencies for the provision of services to those providing facilities as part of the Adoption Service (including the Adoption Services in Scotland and Northern Ireland), and for the fees to be paid by adoption agencies to those providing services on their behalf or assisting in providing those services. This power could, for example, be used to make regulations to underpin or make changes to the "inter-agency fee" (a payment currently made by an adoption agency to another adoption agency which has recruited an adoptive family on its behalf). The power could also be used to make regulations to enable payments to persons assisting in the assessment of adopters, such as members of adoption panels.
51. *Subsection (2)* enables the appropriate Minister to make regulations prescribing the fees which may be charged by local authorities in respect of prescribed facilities of the Adoption Service, provided that the conditions in *subsection (3)* are met. The conditions are that the facilities must be provided in connection with the adoption of a child brought into the United Kingdom for the purpose of adopting the child, or in connection with a Convention adoption, an overseas adoption or an adoption effected under the law of a country or territory outside the British Islands (*subsection (3)*).
52. It is intended that any charges provided for by these regulations will contribute towards the local authority's costs in providing information, preparing and assessing prospective adopters, obtaining medical reports and police checks and preparing post-placement and post-adoption reports in respect of intercountry adoption cases. They will not include any element of profit.
53. *Subsection (4)* enables regulations to prescribe the fees which may be charged by local authorities in respect of the provision of counselling provided in connection with the disclosure of information in relation to a person's adoption. This means that regulations may enable local authorities as well as voluntary adoption agencies to charge fees for the provision of such counselling services. It also provides for those fees, charged by local authorities or voluntary adoption agencies, to be regulated. It is intended to provide for the adoption agency to be able to charge a fee to any person, other than an adopted person, who is receiving counselling in connection with the disclosure of information about an adoption made before the Act is implemented. The fee may only be for the reasonable costs incurred by the adoption agency for the provision of the counselling.
54. The types of fees which may be prescribed are set out in *section 144(2)*.

Section 12: Independent review of determinations

55. *Section 12* provides for the establishment of a review procedure in respect of qualifying determinations made by adoption agencies. A person in respect of whom a determination specified in regulations has been made may apply to a panel established by the appropriate Minister for a review of the relevant determination. It is intended to use this provision to give effect to the White Paper commitment to provide prospective adopters with a right to request a referral to a panel run by an independent organisation,

where an adoption agency indicates that it is minded to turn down their application to adopt.

56. It is also intended that the independent review mechanism will review qualifying determinations made by adoption agencies concerning the disclosure of protected information (defined in *section 57*) held by the agency where, under the Act, the agency have discretion as to whether to disclose such information.
57. Regulations may be made under *subsection (3)* dealing with the duties and powers of a panel (including the power to request a contribution towards the cost of a review from the adoption agency which made the original determination), administration and procedures, appointment of panel members, payment of expenses, the duties of adoption agencies in connection with reviews and the monitoring of reviews.
58. *Subsection (4)* enables the appropriate Minister to delegate functions in relation to the panel to an organisation to perform on his behalf. "Organisation" is defined as including a public body and a private or voluntary organisation. *Subsection (6)* enables the appropriate Minister to make payments to such an organisation and under *subsection (5)* the organisation must perform its functions in accordance with any general or special directions which the appropriate Minister may give.

Section 13: Information concerning adoption

59. *Section 13* requires adoption agencies and courts to give the appropriate Minister statistical or other general information relating to adoption as may be required. Information must be provided at the time and in the form directed by the appropriate Minister. *Subsection (5)* empowers the appropriate Minister to publish abstracts of the particulars sent to him.

Section 14: Default power of appropriate Minister

60. *Section 14* provides default powers to the appropriate Minister. These powers are exercisable where a local authority have failed, without reasonable excuse, to comply with any of the duties imposed by or under the Act or by or under section 1 or 2(4) of the Adoption (Intercountry Aspects) Act 1999. The appropriate Minister may make an order containing directions to ensure that the duty is complied with within the period specified in the order. Any directions issued are enforceable by a mandatory order.

Section 15: Inspection of premises etc.

61. *Section 15* provides for a person authorised by the appropriate Minister to inspect any premises where a child is living who has been placed by an adoption agency or in respect of whom a notice of intention to adopt has been given under *section 44*. An officer of a local authority may only be so authorised with the consent of the authority (*subsection (4)*). *Subsection (5)* enables a person carrying out an inspection of premises under *subsection (1)* to visit the child there and examine the state of the premises and the treatment of the child. *Subsection (2)* enables the appropriate Minister to require an adoption agency to give him information and access to records (in whatever form) relating to the discharge of its functions in relation to adoption. *Subsection (6)* provides for the inspection of any computer being used in connection with an adoption agency's records.
62. *Subsection (7)* gives any person authorised to carry out an inspection under this section a right of entry to premises at any reasonable time and a right to request reasonable assistance. He must, if required, produce documentation showing his authority to carry out the inspection (*subsection (8)*). Obstructing a person authorised to inspect premises or records is an offence, punishable on summary conviction by a fine up to level 3 on the standard scale (see *subsection (9)*).

Section 16: Distribution of functions in relation to registered adoption societies

63. **Section 16** inserts a new section 36A into Part 2 of the Care Standards Act 2000. The new section 36A makes provision for the distribution of functions in relation to registered adoption societies. Paragraph 106 of Schedule 3 disapplies the requirement for separate branch registration in relation to registered adoption societies and branches of registered adoption societies will not therefore need to be separately registered.
64. The functions covered by section 36A are functions relating to voluntary adoption agencies conferred on the registration authority by or under Part 2 of the Care Standards Act 2000 (for example the registration and inspection functions) or under Chapter 2 of Part 1 of the Act (for example the function of the registration authority to receive a fee on notification of a change of ownership)(subsection (1)).
65. Subsections (2) to (5) have effect unless regulations made under subsection (6) make different provision. Subsection (2) provides that the functions of the registration authority are to be exercisable according to where the principal office of an agency is situated. If it is in England the registration authority is the National Care Standards Commission and the voluntary adoption agency will register with the Commission and if it is in Wales, the registration authority is the National Assembly for Wales and the voluntary adoption agency will register with the Assembly.
66. Under the Care Standards Act 2000 the registration of an agency may be subject to conditions. Subsection (3) provides that in so far as the 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. However, if an agency has a branch in Wales, then the Commission must obtain the agreement of the Assembly to the imposition etc. of conditions and vice versa (subsection (4)).
67. Subsection (5) provides that the functions in relation to inspection are exercisable where the premises are in England by the Commission and where the premises are in Wales by the Assembly. This will enable the Commission to inspect branches of agencies which operate in England but are registered with the Assembly, and vice versa.
68. Subsection (6) enables the Secretary of State and the Assembly to make regulations jointly to provide for any function to which the section applies to be exercisable by the Commission instead of the Assembly or by the Assembly instead of the Commission. Regulations may also provide for the registration authorities to exercise a function concurrently or jointly or to require the agreement of, or consultation with, the other.

Section 17: Inquiries

69. **Section 17** provides that the appropriate Minister may cause an inquiry to be held into any matter connected with the functions of an adoption agency. *Subsection (2)* enables him to direct, before the inquiry begins, that it is to be held in private. In the absence of a direction from the appropriate Minister, the person holding the inquiry may decide whether to hold it, or any part of it, in private. The provisions in section 250(2) to (5) of the Local Government Act 1972 are to apply. This section follows the model of section 81 of the Children Act 1989, which also provides for inquiries.

Chapter 3 - Placement for Adoption and Adoption Orders

70. **Sections 18 to 29** introduce new provisions for the placement of children for adoption. An adoption agency may (except in the case of a child who is less than 6 weeks old – see paragraph 74) only place a child for adoption with the consent of the parent or guardian (referred to in these notes as the ‘parent’) under **section 19** or under an order made by the court authorising a local authority to place a child with any prospective adopters chosen by them (“a placement order”- see **section 21**). Provision is

made for who is to have parental responsibility for the child and the other consequences of placement with consent and placement orders.

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

Section 18: Placement for adoption by agencies

73. *Section 18(1)* provides that an adoption agency (except in the case of a child who is less than 6 weeks old) may only place a child for adoption with prospective adopters where the parent of the child has consented to the placement or, in the case of a local authority, where it has obtained a placement order. *Subsection (2)* provides that an adoption agency may not place a child for adoption with prospective adopters unless the agency is satisfied that the child ought to be placed for adoption. Where a child is placed or authorised to be placed for adoption by a local authority, the child is a looked after child for the purposes of the Children Act 1989 (*subsection (3)*).
74. An adoption agency may place a child who is less than 6 weeks old ("baby placement") for adoption with the voluntary agreement of the parent or guardian. Regulations made under *section 9* will set out the process for obtaining this agreement. *Subsection (3)* applies to such a child. When the child reaches the age of 6 weeks and adoption remains the plan, the agency should obtain the consent of the parent or a placement order.
75. Under *subsection (5)* placement has been given an extended meaning under the Act covering both placing a child with prospective adopters and, where the child is already placed with people for other purposes (for example with foster carers), leaving the child with them as approved prospective adopters. It will be open to local authority foster parents to seek formal approval from the local authority as prospective adopters in respect of a child being fostered by them. If they are approved as prospective adopters and the agency leave the child with them as prospective adopters, the placement will be an agency placement and there will be no need for them to give formal notice under *section 44*. If the agency does not approve them as prospective adopters, local authority foster carers can independently give notice of intention to apply to adopt the child as a non-agency case, providing the condition in *section 42(4)* is met.
76. Under *subsection (6)* references in Chapter 3 to an agency being, or not being, authorised to place a child for adoption are to the agency being or not being authorised to do so under *section 19* or a placement order. This means that where a child who is less than 6 weeks old is placed for adoption *section 25*, for example, will not apply.

Section 19: Placing children with parental consent

77. *Section 19* makes provision for placing children with parental consent. It allows an adoption agency to place a child for adoption where it is satisfied each parent has given consent to placement and that consent has not been withdrawn. Placement with consent may be with prospective adopters identified in the consent or with any prospective adopters who may be chosen by the agency (*subsection (1)*). Consent to placement with prospective adopters identified in the consent may be combined with consent to the child being subsequently placed for adoption with any prospective adopters who

may be chosen by the agency (*subsection (2)*). Consent can be withdrawn at any point before an application for the adoption order is made.

78. *Subsection (3)* provides that where an application has been made as a result of which a care order under the Children Act 1989 may be made and that application is pending, the provisions relating to placement of children with parental consent do not apply. Where a local authority is satisfied such a child should be adopted it must apply for a placement order under *section 22(2)*. Where a child is placed for adoption with consent and a care order or a placement order is subsequently made in respect of the child, the authority to place for adoption provided as a result of the earlier *section 19* consent no longer applies. Where a child is placed for adoption with consent and a special guardianship order is subsequently made in respect of the child, the authority to place no longer applies unless the special guardian consents, as their consent is required under *section 19(1)*. Where a child is placed with prospective adopters and consent is then withdrawn the child continues to be treated as placed for adoption until the child is returned to the parents or any placement order application is determined (*subsection (4)*). *Section 19* is subject to the provisions in *section 52* relating to what is meant by consent. Consent must be given in a prescribed form and to ensure it is properly given in full understanding of what it involves it is intended that it will be witnessed by an officer of the Children and Family Court Advisory and Support Service, provided for by rules made under *section 102*.

Section 20: Advance consent to adoption

79. *Section 20* enables a parent who consents to his child being placed for adoption by an adoption agency to give consent at the same time to the making of a future adoption order ('advance consent'). As with placement with consent, advance consent may be to adoption by prospective adopters identified in the consent or by any prospective adopters who may be chosen by the agency. *Subsection (3)* provides that consent may be withdrawn. It must be withdrawn by notice in writing to the agency or in the form prescribed (see *section 52(8)*). *Subsection (4)* enables a parent who gives advance consent to adoption to give notice to the agency that he does not wish to be informed when an application for an adoption order is made, and to withdraw any such notice. This provision allows a parent who wishes to relinquish their child for adoption to do so, and to provide that they need have no further involvement in the adoption proceedings.
80. *Subsection (6)* provides that this section is subject to the provisions in *section 52* relating to what is meant by consent.

Section 21: Placement orders

81. *Section 21* defines a placement order. It 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 (*subsection (1)*). Only local authorities are able to apply for placement orders. *Subsection (2)* provides that the court may not make a placement order unless the child is already subject to a care order or it has the power to make a care order under section 31(2) of the Children Act 1989. In order to be able to make a care order (and therefore a placement order) the court must first be satisfied that the child concerned is suffering, or likely to suffer, significant harm, and that this is attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him, or the child is beyond parental control. The only exception to this is where the child has no parent or guardian. In these cases the Children Act 1989 'significant harm' threshold in section 31(2) does not apply. This is to allow local authorities to place orphaned children for adoption.
82. Linking the making of placement orders to these provisions in the Children Act 1989 is intended to deliver on the Government's undertaking to align adoption law with the Children Act 1989. The same threshold for compulsory intervention in family life is to apply where a local authority seeks authority to place a child for adoption without parental consent as applies where an authority seeks to take a child into care under a care

order. In placement order cases, where the court is satisfied that the ‘significant harm’ threshold is met, it will then consider whether a placement order should be made. The [section 1](#) provisions will apply: the child’s welfare will be the paramount consideration, the court will apply the welfare checklist set out in [section 1\(4\)](#), the court will have to consider its full range of powers, and will only make the order if it is better for the child than not to do so.

83. *Subsection (3)* provides that the court may only make a placement order if it is satisfied that the parent has consented to the child being placed for adoption with any prospective adopters who may be chosen by the agency and has not withdrawn that consent or that the parent’s consent should be dispensed with. The grounds for dispensing with consent are set out in [section 52\(1\)](#). A placement order will continue in force until it is revoked, an adoption order is made in respect of the child or the child marries or reaches 18 (*subsection (4)*).

Section 22: Applications for placement orders

84. [Section 22](#) sets out when a local authority must apply for a placement order. An authority must apply for a placement order when the child is placed for adoption or is accommodated by a local authority, they are satisfied that the child ought to be placed for adoption, the parent does not consent to placement for adoption and either the child has no parent or guardian or the authority consider the threshold criteria in [section 31\(2\)](#) of the Children Act 1989 are met (*subsection (1)*). This might occur for example where the parent has withdrawn consent to placement for adoption but the authority remains of the view the child should be adopted.
85. Where an application is pending on which a care order under the Children Act 1989 might be made, or the child is subject to a care order but the parent does not consent to the placement of a child for adoption, and the local authority are satisfied that the child should be placed for adoption, they must apply to the court for a placement order (*subsection (2)*). If the child is subject to a care order and the parent or guardian is prepared to consent to the placement of the child for adoption, the authority have a discretion as to whether to apply for a placement order (*subsection (3)*). Alternatively, they could decide to place the child with parental consent under [section 19](#).
86. *Subsection (4)* provides that where an application for a placement order is pending, the child is a looked after child for the purposes of the Children Act 1989 until the application is determined. If a placement order is made the child continues to count as looked after by virtue of [section 18\(3\)](#). *Subsection (6)* enables the court where the application for a placement order is pending and no interim care order has been made to give directions for the child to undergo medical, psychiatric or other assessment.
87. The application for a placement order is to be made by the appropriate local authority as defined in *subsection (7)*.

Section 23: Varying placement orders

88. [Section 23](#) provides that the court can vary a placement order to substitute another local authority for the authority authorised to place the child for adoption but the application has to be made by both authorities.

Section 24: Revoking placement orders

89. [Section 24](#) makes provision for the revocation of placement orders. A local authority or the child (or a person acting on behalf of the child) may apply to revoke a placement order at any time. Any other person, for example the parent, may apply for the revocation of a placement order with the leave of the court if the child is not yet placed for adoption by the authority. Leave cannot be given by the court unless it is satisfied that there has been a change in circumstances since the order was made.

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

Section 25: Parental responsibility

91. *Section 25* makes provision for who is to have parental responsibility where an agency is authorised to place a child for adoption under *section 19* or where a placement order is in force. Parental responsibility for the child is given to the agency (*subsection (2)*) and while the child is placed with prospective adopters, parental responsibility is given to them (*subsection (3)*). The child's parents retain parental responsibility throughout the process, up to the point at which any adoption order is made.
92. *Undersubsection (4)* it is for the agency to determine the extent to which the parental responsibility of any parent or guardian or of prospective adopters is to be restricted.

Section 26: Contact

93. *Sections 26 and 27* make provision for applications for contact in respect of children placed for adoption and where an adoption agency is authorised to place a child for adoption under *section 19* or under a placement order. *Subsection (1)* provides that where an adoption agency is authorised to place a child for adoption, or a child is placed for adoption who is less than 6 weeks old, any contact order under section 8 of the Children Act 1989 or an order under section 34 of that Act (parental contact with children in care) ceases to have effect. The arrangements set out in previous contact orders may no longer be appropriate. The objective should be to agree whatever new arrangements for contact are appropriate given the adoptive placement. However, should agreement not be possible, an application may be made to the court for an order for contact. The application may be made by the child or the agency or the parent or other persons who are identified in *subsection (3)*. On an application the court may make an order requiring the person with whom the child lives or is to live to allow the child to visit or stay with the person named in the order or for that person and the child otherwise to have contact with each other.
94. *Subsection (5)* provides that *section 26* does not prevent an application for a contact order under section 8 of the Children Act 1989 being made where the application is to be heard together with an application for an adoption order. This means that at the final adoption order hearing the court may make a contact order under section 8, ensuring that the court can make whatever arrangements may be appropriate for contact following the making of the final adoption order. This replicates the position under the current legislative framework.

Section 27: Contact: supplementary

95. *Section 27* makes supplemental provision in relation to contact. There may be cases where it is inappropriate for contact to take place even though provided for under an order. *Subsection (2)* enables the agency to refuse contact for a period of not more than 7 days if it is satisfied that it is appropriate to do so in order to safeguard the child's welfare. Regulations may set out the circumstances in which the terms of any order made under *section 26* may be departed from.
96. *Subsection (4)* imposes a duty on the court when making a placement order or a final adoption order to consider the arrangements the agency has made or proposes to make in relation to contact and under *subsection (5)* the court may impose any conditions on a contact order made under section 26 as it thinks fit.

Sections 28 and 29: Further consequences of placement and placement orders

97. *Sections 28 and 29* make further provision as to the consequences of placement. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under *section 19*, a parent cannot apply for a residence order (*section 28(1)(a)*), unless an application for a final adoption order has been made and the parents have obtained the leave of the court to oppose the making of the adoption order under *section 47(3)* or *(5)*. This is to allow competing applications for residence orders from parents at contested final adoption order hearings. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under *section 19* and an application has been made for an adoption order, a guardian of the child may not apply for a special guardianship order unless he has obtained the leave of the court under *section 47(3)* or *(5)* (*section 28(1)(b)*).
98. If an agency is authorised to place a child for adoption (whether or not the child is placed) a person cannot cause the child to be known by a new surname or remove him from the United Kingdom except with the leave of the court or if each parent gives written consent. Prospective adopters with whom a child is placed cannot call the child by a different surname unless these conditions are satisfied. Prospective adopters may take him out of the United Kingdom on holiday for up to a month (*section 28(2) to (4)*).
99. *Section 29* makes further provision in relation to placement orders. Where a placement order is made in respect of a child and either the child is subject to a care order or the court makes a care order in the same proceedings, the care order is suspended during the period when the placement order is in force. On the making of a placement order, any order mentioned in section 8(1) of the Children Act 1989 (for example, residence orders) and any supervision order cease to have effect. Furthermore, where a placement order is in force a prohibited steps order, a specific issue order, a residence order and a supervision order cannot be made in respect of that child.
100. *Subsection (5)* provides that where a placement order is in force no special guardianship order may be made in respect of the child. However, once an application for a final adoption order has been made in respect of the child, a person entitled to do so may make a competing application for a special guardianship order with the leave of the court.
101. *Subsection (4)* provides that where a placement order is in force and an application for a final adoption order has been made a parent or guardian may make a competing application for a residence order providing they have the leave of the court to oppose the making of the final adoption order under *section 47(3)* or *(5)*. Once an application for a final adoption order has been made anyone else who is entitled to do so may make a competing application for a residence order, with the leave of the court.

Removal provisions

102. *Sections 30 to 35* make provision in relation to the removal of children who are or may be placed for adoption by adoption agencies, to ensure that they are only removed from placements by authorised people in the appropriate manner. *Sections 30 to 35* apply whether or not the child in question is in England or Wales.

Section 30: General prohibitions on removal

103. *Section 30* imposes general restrictions on removal. *Section 30* is subject to *sections 31, 32 and 33*. Under subsection (1)(a) where a child is placed with prospective adopters under *section 19* it is an offence for a person other than the agency to remove the child from that placement (*subsections (1) and (8)*). Under *subsection (1)(b)* where a child is placed for adoption and either is less than 6 weeks old or the agency has at no time been authorised to place the child for adoption, the same offence applies. This ensures that where a child is placed with the mother's consent while under 6 weeks of age but the agency is later unable to secure the mother's consent under *section 19* the restrictions on removal would continue to apply to the placement.

104. *Subsection (1)* applies even if the parent has withdrawn his consent to placement. However, under *section 31* where a parent withdraws his consent to placement the agency must return the child within 7 days if the child has not yet been placed for adoption under *section 19* with prospective adopters or the child is placed and either the child is less than 6 weeks old or the agency has at no time been authorised to place the child for adoption. Under *section 32* where a parent withdraws his consent to placement the prospective adopter must return the child to the agency within 14 days if the child has been placed under *section 19* with prospective adopters, unless an application is or has been made for a placement order. If no application for a placement order has been made within seven or 14 days the agency must return the child to the parent, unless the child is subject to a care order.
105. If a child is accommodated by a local authority and they have applied for a placement order and the application has not been disposed of, the child may not be removed from the accommodation pending the determination of that application without the leave of the court (*section 30(2) and (8)*). Where an agency is authorised to place a child for adoption but the child is not yet placed and is being provided with accommodation by an agency in, for example, a foster placement or a children's home, it is an offence for a person other than the agency to remove the child from that accommodation (*subsections (3) and (8)*). *Subsection (3)* applies if the parent has withdrawn his consent to placement.
106. The general prohibitions on removal set out in this section are subject to the specific provisions made in *sections 31 to 33* (*subsection (4)*). But the provisions in *sections 30 to 33* covering prohibition on removal do not prevent the removal of a child who is arrested, or removal as a result of the exercise by a local authority or other person of a power conferred by any enactment (excluding the right under section 20(8) of the Children Act 1989 of a person who has parental responsibility for a child to remove a child voluntarily accommodated by a local authority (*subsections (6) and (7)*). *Sections 31 to 33* do not apply if the child is subject to a care order (*subsection (4)*).
107. *Subsection (8)* provides that a person who removes the child in breach of *subsection (1), (2) or (3)* is liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

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

108. *Section 31* applies where a child is not yet placed for adoption but is being provided with accommodation by an adoption agency and consent to placement has been withdrawn, or where a child is placed for adoption and either the child is less than 6 weeks old or the agency has at no time been authorised to place the child (*subsections (1) and (3)*). Consent to placement must be withdrawn by notice in writing to the agency or in the form prescribed. If the parent informs the agency that he wishes the child to be returned to him, the agency must return the child to him within seven days unless the agency is a local authority and they have applied for a placement order (*subsection (2)*).

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

109. *Section 32* applies where a child is placed for adoption with prospective adopters under *section 19*, the parent has withdrawn consent and the agency agrees the child should be returned to his parent (*subsection (1)*).
110. If the parent informs the agency he wishes the child to be returned to him, the agency must give notice to the prospective adopters that the parent wishes the child to be returned to him and the prospective adopters have to return the child to the agency within 14 days (*subsection (2)*). The agency must then return the child to his parent (*subsection (4)*). If the prospective adopters do not return the child, they commit an offence and are liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both (*subsection (3)*).

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

Section 33: Recovery by parent etc. where application for placement order refused

112. *Section 33* applies where a child is placed for adoption under *section 19*, the local authority's application for a placement order has been refused and the parent wishes the child to be returned to him (*subsection (1)*). The prospective adopters must return the child to the authority on the date set by the court and as soon as they do, the child must be returned to his parent (*subsections (2) and (4)*). If the prospective adopters do not do so, they commit an offence and are liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both (*subsection (3)*).

Section 34: Placement orders: prohibition on removal

113. *Section 34* applies where a placement order is in force or has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by a local authority (*subsection (1)*). It is an offence, punishable as set out in paragraph 107 for a person (other than a local authority) to remove the child from the prospective adopters or accommodation provided by the agency (*subsections (1) and (5)*).
114. Where a placement order has been revoked it will be for the court when they revoke the order to determine whether the child is to remain with the prospective adopters or to be returned to the parent (*subsections (3) and (4)*). If the court determines the child should not remain with the prospective adopters, they must return to the child to the local authority, otherwise they commit an offence.
115. *Subsections (4) and (5)* provide that a person who removes a child, or fails to return a child, is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

Section 35: Return of child in other cases

116. *Section 35* applies in cases where the prospective adopters want to return the child or the adoption agency has decided that the child should not remain with the prospective adopters. In the first case the prospective adopters must give notice to the agency that they want to return the child and the agency has to collect the child (*subsection (1)*). The agency must also tell the child's parent so he may consider his position. In the second case, the agency must give notice to the prospective adopters that it does not want the child to remain with them and the prospective adopters must return the child within 7 days. Again, the agency must inform the child's parent (*subsection (2)*). If the prospective adopters fail to return the child, they commit an offence and are liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding level 5 of the standard scale, or both (*subsection (4)*).
117. If before notice of removal is given, an application was made for an adoption order in England and Wales (or Scotland or Northern Ireland) or for a residence order or special guardianship order, or for leave to apply for these orders in respect of the child, and that application has not been disposed of, the prospective adopters do not have to return the child unless the court makes an order to that effect (*subsection (5)*).

Sections 36 to 40: Restrictions on removal

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

Section 36: Restrictions on removal

119. *Section 36* provides that where an application for an adoption order has been made, notice of intention to apply to adopt has been given (as required under *section 44*) or the court's leave sought to make an application, a child may only be removed in accordance with the provisions made in *sections 36 to 40*. None of the restrictions prevent removal in the case of the child being arrested. Where leave to apply to adopt has been granted the restrictions on removal extend for three days to allow notice of intention to be given (*subsection (3)*). In the case of notice of intention to adopt the restrictions on removal apply for 4 months (under *section 44* there must be a minimum of 3 months between the giving of notice and an application to adopt), but a second notice given within 5 months of the first will not trigger protection. This is to prevent the giving of repeated notices of intention to adopt as a means of preventing removal of the child (*subsection (2)*).
120. Where a parent may remove his child in accordance with *section 36*, the persons with whom the child has his home must return the child to the parent at once. A person who fails to comply with this provision or removes a child in breach of *section 36* is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both.

Section 37: Applicants for adoption

121. Where an application for adoption has been made the child may only be removed with the leave of the court, or by a local authority or other person in exercise of a power conferred by any enactment (for example, for child protection purposes under the Children Act 1989). Once an application for an adoption order has been made in respect of a child voluntarily accommodated under section 20 of the Children Act 1989 the provision in section 20(8) allowing any person who has parental responsibility to remove the child at any time does not apply.

Section 38: Local authority foster parents

122. Where a local authority foster parent has given notice of intention to adopt, which they may do once the child has lived with them for one year, then the child may only be removed with the leave of the court, by a local authority or other person in the exercise of a power conferred by any enactment or, if the child is voluntarily accommodated under section 20 of the Children Act 1989, by a person who has parental responsibility for the child (*subsection (5)*). But where the child has been with the foster carer for 5 years or more or an application for leave to make an application to adopt has been made but not disposed of, the right of a person with parental responsibility for the child under section 20(8) of the Children Act 1989 to remove a child does not apply (*subsections (2) and (3)*).

Section 39: Partners of parents

123. Where a partner of a parent has given notice of intention to apply to adopt, the child may only be removed with the leave of the court or by a local authority or person in the exercise of a power conferred by any enactment (other than section 20(8) of the Children Act 1989), or by a parent or guardian of the child (unless the child has lived with the partner of the parent for 3 out of the last 5 years, in which case a parent may not remove the child). A definition of "partner of a child's parent" is given in *section 144(7)*.

Section 40: Other non-agency cases

124. In these cases where notice of intention to adopt has been given or leave has been applied for under *section 42(6)* and the application has not been disposed of, the child may only be removed with the leave of the court, by a local authority or other person acting under statutory powers (other than section 20(8) of the Children Act 1989).

Section 41: Recovery orders

125. *Section 41* makes provision for what is to happen where a child is removed, or there are reasonable grounds for believing that a person intends to remove a child, or a child is withheld and not returned, in breach of *sections 30 to 35*. It also applies where a person has failed to comply with *sections 31(4), 32(2), 33(2), 34(3) or 35(2)*.
126. In those circumstances an application may be made to the court and the court may by order –
- direct any person who is in a position to do so to produce the child,
 - authorise the removal of the child by an authorised person,
 - require anyone who has information as to the child’s whereabouts to disclose that information to a constable or officer of the court, or
 - authorise a constable to enter any premises specified in the order (if there are reasonable grounds for believing the child is there) and search for the child, using reasonable force if necessary.
127. Authorised persons are any person named by the court, any constable, or any person who is authorised to exercise any power under the order by the adoption agency (*subsections (2) to (4)*).
128. If a person intentionally obstructs an authorised person exercising the power of removal he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
129. A person who is required to disclose information must disclose that information even though it might amount to evidence that he had committed an offence. However, in any criminal proceedings in which the person is charged with an offence (except one which is excluded in *subsection (8)* e.g. offences under section 2 or 5 of the Perjury Act 1911) the prosecution cannot adduce evidence relating to the information provided or ask questions about it, unless it is raised by or on behalf of that person.
130. *Subsection (9)* makes provision for an order made in England and Wales under *section 41* to have effect in Scotland as if it were an order of the courts there.

Section 42: Child to live with adopters before application

131. *Section 42* sets out the period a child must live with the applicants before they can apply for an adoption order. Where the child is placed for adoption by an adoption agency (or pursuant to an order of the High Court, or being adopted by his natural parent) an application for an adoption order may not be made unless the child has had his home with one or both of the applicants at all times in the 10 weeks before the application is made (*subsection (2)*). For adoptions by a partner of a parent, the child is required to have had his home with the prospective adopters for a period of at least 6 months before the application may be made (*subsection (3)*). The period is one year in the case of non-agency applications by local authority foster parents and 3 out of the last 5 years in any other non-agency cases, unless the court gives leave for an earlier application (*subsections (4) to (6)*).

132. Furthermore, the court may not make an adoption order unless it is satisfied the agency, or the local authority in non-agency cases, have had sufficient opportunities to see the child with the applicants in their home (*subsection (7)*).

Section 43: Reports where child placed by agency

133. The adoption agency which places the child for adoption is responsible for submitting to the court a report on the suitability of the applicants and any other matters relevant to the operation of *section 1* and for assisting the court as it may direct. The report should in particular address the matters in the welfare checklist.

Section 44: Notice of intention to adopt

134. *Section 44* provides that an adoption order may not be made in respect of a child in a non-agency case unless the proposed adopters have given notice of intention to adopt to the appropriate local authority (*subsection (2)*). The notice must be given not more than two years or less than three months before the application is made for the adoption order (*subsection (3)*). The ‘appropriate local authority’ is defined in *subsection (9)*. Where the local authority receive a notice of intention to adopt they must investigate (or make arrangements for this to be done by another agency) and are responsible for preparing a report for the court which includes the suitability of the proposed adopters and any other matters relevant to the operation of *section 1*(*subsections (5) and (6)*). Where a person needs leave to apply for an adoption order under *section 42(4) and (5)* he cannot give notice of intention to adopt unless he has the court’s leave to make the adoption application (*subsection (4)*).

Section 45: Suitability of adopters

135. *Section 45* amplifies the power in *section 9* in relation to determining the suitability of prospective adopters. *Subsection (1)* enables the appropriate Minister to make regulations prescribing the matters which must be taken into account by an adoption agency in determining the suitability of any persons to adopt a child, or in making any report in respect of the suitability of such persons. The regulations may in particular make provision for ensuring that adoption agencies give proper regard to the need for stability and permanence in the relationship of a couple in determining their suitability to adopt (*subsection (2)*). Regulations made under *subsection (2)* will be subject to the affirmative procedure – see *section 140(3)*.

Section 46: Adoption orders

136. *Section 46* explains the effect of an adoption order. It gives parental responsibility for a child to the adopters. It extinguishes the birth parent’s parental responsibility, any order under the Children Act 1989 (which includes residence orders), most orders under the Children (Scotland) Act 1995 or the Children (Northern Ireland) Order 1995 and any duty in an agreement or an order of a court to make maintenance payments (*subsection (2)*). The two sorts of orders under the Children (Scotland) Act 1995 which would remain in force once an adoption order has been made are orders concerning property and exclusion orders which bar a parent from the family home because of the risk he or she poses to the child. An adoption by a partner of a parent does not affect the parental responsibility of the parent of the adopted child or any duties of that parent (*subsection (3)*). *Subsection (5)* provides that an adoption order can be made even if the child to be adopted is already an adopted child.
137. Once an adoption order is made, any liabilities of the birth parent under the Child Support Act 1991 will cease to have effect. A parent for the purposes of that Act is defined as any person who is in law the mother or father of the child (see *section 55(1)* of that Act). Once a child is adopted the birth parent ceases to be the parent of the child, and the adoptive parents become the parents of the child for the purposes of that Act,

therefore on adoption any existing maintenance assessment will cease to have effect and a court order (if any) for the child's maintenance will cease by virtue of [section 46\(2\)\(c\)](#).

138. *Subsection (6)* provides that before making an adoption order the court must consider whether there should be arrangements for allowing contact. In this respect it may consider any existing or proposed arrangements. The court may make an order under section 8 of the Children Act 1989 of its own motion or there may be an application for such an order before it (see paragraph 94).

Section 47: Conditions for making adoption orders

139. *Section 47* sets out the conditions which must be satisfied before an adoption order can be made where a child has a parent or guardian. One of three conditions must be satisfied. The first condition is that the court is satisfied that each parent consents to the making of the adoption order or has given advance consent to the making of the adoption order under [section 20](#) (and has not withdrawn that consent) and does not oppose the making of an adoption order or that the parent's consent should be dispensed with. Where the parent has given advance consent to the adoption under [section 20](#) he may only oppose the making of the adoption order with the leave of the court (*subsection (3)*).
140. The second condition is that the child has been placed for adoption by an adoption agency with the prospective adopters who are applying for the order and either the child was placed for adoption with the consent of each parent under [section 19](#) and the consent of the mother was given when the child was at least 6 weeks old or under a placement order and no parent opposes the making of the adoption order. A parent may only oppose the making of the order with the leave of the court (*subsection (5)*).
141. *Subsection (7)* provides that the court cannot give leave under *subsection (3) or (5)* for a parent to oppose the making of the adoption order unless it is satisfied that there has been a change in circumstances since the consent was given or the placement order was made. For example, in a case where a placement order was made on the grounds of the child's welfare because of parental drug or alcohol abuse, such a change in circumstances might include proven and successful rehabilitation. Where a mother consented to placement before her baby was 6 weeks old, and did not subsequently confirm that consent, she does not need the leave of the court to oppose the adoption order.
142. The third condition is that the child is free for adoption by virtue of a freeing order made in Scotland or Northern Ireland. The provisions in the Adoption Act 1976 relating to freeing are repealed by the Act, but under the transitional provisions in paragraph 7 of Schedule 4 to the Act, where a child is freed for adoption under section 18 of the Adoption Act 1976 the third condition is deemed to be satisfied.
143. An adoption order may not be made in relation to a person who is, or has been, married or who has attained the age of 19 (*subsections (8) and (9)*).

Section 48: Restrictions on making adoption orders

144. *Section 48* provides that a court may not hear an application for an adoption order where a previous application by the same adopters in respect of the same child was refused, unless it appears to the court that there is a change of circumstances or other reason which justifies the second application.

Section 49: Applications for adoption

145. *Section 49* provides that an application for an adoption order may be made by a couple or one person but only if it is made under [section 50 or 51](#) and the condition as to domicile or habitual residence is satisfied. The term "couple" is defined in [section 144](#). An application for an adoption order may only be made if the person to be adopted has not reached 18 by the date of the application.

Section 50: Adoption by couple

146. Under *section 50* an application for an adoption order by a couple may only be made where both of them have reached the age of 21. However, where one of the couple is the mother or father of a child to be adopted, an application may be made if that person is 18 or over and the other person is 21 or over.

Section 51: Adoption by one person

147. *Section 51* provides that an application may be made by one person who is 21 and is not married. In certain circumstances, an adoption application may be made by one person who is married. A partner of a natural parent (which includes a person married to the parent) may adopt the child of that natural parent (*subsection (2)*). This means that the parent is no longer required to make a joint application to adopt his own child with his partner, as is presently the case in respect of step-parent adoptions. The term “partner” is defined in *section 144*.

Section 52: Parental etc. consent

148. *Section 52* applies generally to placement and adoption and covers the giving and withdrawal of consent to placement or to adoption (including advance consent to adoption) (*subsection (2)*).
149. Dispensing with a parent’s consent is relevant in relation to the making of placement orders and adoption orders. *Subsection (1)* provides that the court cannot dispense with the consent of any parent to the child being placed for adoption or to the making of an adoption order in respect of the child unless it is satisfied that the parent cannot be found or is incapable of giving consent or that the welfare of the child requires parental consent to be dispensed with. *Section 1* applies to a decision about whether or not to dispense with the consent of a parent to a placement order or an adoption order. The child’s interests are the paramount consideration and the welfare checklist in *section 1(4)* recognises the importance of the child’s relationship with his parents and their ability and willingness to provide him with a secure home and otherwise to meet his needs.
150. Any consent given by the mother of a child to the making of an adoption order is ineffective if it is given less than 6 weeks after the child’s birth (*subsection (3)*).
151. *Subsection (5)* defines what is meant by consent for the purposes of Chapter 3. Consent means consent which is given unconditionally and with full understanding of what is involved. A person can give consent to adoption without knowing the identity of the persons in whose favour the adoption order will be made. Court rules are to prescribe the form in which consent to placement for adoption under *section 19* and advance consent to adoption under *section 20* must be given, in a way that allows the parent to understand the position clearly. Withdrawal of those consents must be in the prescribed form or by notice in writing given to the agency. Rules may also prescribe a form of consent that may be used in other circumstances (*subsection (7)*). *Subsection (4)* provides that once an application for an adoption order has been made any consent that has been given to placement for adoption or consent to final adoption may not be withdrawn. If the parent wishes to oppose the adoption order in these circumstances they must seek the court’s leave under *section 47(3) or (5)*.
152. *Subsections (9) and (10)* deal with the situation where an unmarried mother gives consent to placement under *section 19* and subsequently the child’s father acquires parental responsibility for the child, by marriage or a parental responsibility agreement or order under the Children Act 1989. Under *subsection (10)* the father who later acquires parental responsibility is deemed to have consented on the same basis as the mother. Without this authority for the placement would lapse immediately the father acquired parental responsibility. Following his acquisition of parental responsibility, and regardless of *subsection (10)*, the father would be able to withdraw consent in the

case of a placement for adoption, which is the same position the mother is in. Where the mother has given advance consent to adoption, the father would be given notice of the application for an adoption order and would be able to oppose, with the leave of the court, the making of the order.

Section 53: Modification of 1989 Act in relation to adoption

153. Under the Act a child who is authorised to be placed for adoption by a local authority is looked after by the authority whether or not he is actually placed for adoption. The intention in extending the 'looked after' status to children where there is authorisation to place for adoption is to ensure that it is clear that the local authority are to have a continuing responsibility for managing and overseeing the child's future until an adoption order is made, and regularly reviewing their progress. This also applies to a child who has been placed for adoption and is less than 6 weeks old.
154. However, in order to reflect the particular circumstances of placement for adoption, certain provisions in the Children Act 1989 will need to be disapplied where a local authority are authorised to place a child for adoption, whether or not the child is placed. For example in relation to section 22(4)(b), (c) and (d) and (5)(b), it may not be appropriate for an authority to be under a duty to consult the child's parent or other relatives before taking any decision with respect to the child. This will need to be considered on a case by case basis. Similarly, where a child is placed for adoption with prospective adopters, the authority are to be under an obligation to ascertain and take the views of the prospective adopters with whom the child is placed before making a decision with respect to that child.
155. The regulations may also provide for paragraph 15 of Schedule 2 to the Children Act 1989 to be disapplied. That paragraph provides that a local authority looking after a child must endeavour to promote contact between the child and his parent unless it is not reasonably practicable or consistent with the child's welfare. This duty is not to apply where a local authority are authorised to place a child for adoption. Guidance will be given to local authorities to deal with the issue of contact on a case by case basis and the new provisions in *sections 26 and 27* will enable a parent, for example, to make an application for contact with his child.
156. *Section 53(3)* makes similar provision to disapply the specified sections of the Children Act 1989 where a registered adoption society is authorised to place a child for adoption or has placed a child for adoption who is less than 6 weeks old.

Section 54: Disclosing information during adoption process

157. *Section 54* provides that the general regulation making power under *section 9* of the Act may be used to oblige adoption agencies in prescribed circumstances to provide prescribed information to prospective adopters. The intention is to require agencies to provide prospective adopters with the necessary information about a child (for example his needs, his interests, how he relates to other children and adults and his education and health) to help them decide whether to accept a match that the agency suggests with a child.

Section 55: Revocation of adoptions on legitimisation

158. *Section 55* provides that an adoption order may, on application, be revoked in circumstances where a child is legitimised by the marriage of his natural parents to each other.

Disclosure of information in relation to a person's adoption

159. *Sections 56 to 65* introduce new provisions on the information that adoption agencies must keep in relation to a person's adoption, the information that agencies must disclose to adopted adults on request, the information that courts must release to adopted adults

on request and the information that adoption agencies may release to adopted adults, birth parents and others. Many of the provisions on the disclosure of information provide powers for the making of regulations to enable the necessary detail to be set out in secondary legislation.

160. These provisions cover the two types of information held under *section 56*– protected information (see *section 57*) and information which is not protected (see *section 58*).
161. The Act establishes a new system for access to protected information about adopted persons and others involved in their adoption. Currently information about an adopted person is held by three sources: the adopted person’s adoption agency, which would normally hold case details and other information; the Registrar General, who holds birth records and basic information about the adopted person’s adoption, such as his adoptive name and the names of his adoptive parents; and the court, which will hold reports submitted to it and records of the adoption proceedings. Under these provisions, whilst the Registrar General will retain his duty to maintain the Adopted Children Register and the Adoption Contact Register, the adoption agency will be the main “gateway” for access to this information.
162. Under the new system the adopted adult will have a right to certain information under *section 60*. A person may apply to the appropriate adoption agency as defined in *section 65(1)* for protected information about a person involved in an adoption, such as the adopted person, his birth parents or the adoption social worker. If the protected information is about an adult, *section 61* will apply. If the protected information is about a child or it is not possible to disclose protected information about an adult without also disclosing protected information about a child, *section 62* will apply. Regulations may be made to provide for determinations made by adoption agencies under these provisions to be reviewed by an independent panel constituted under *section 12*.
163. These sections will only apply to adoptions that take place after the Act has been implemented. The arrangements for access to information for those adopted prior to the date of coming into force of *sections 56 to 65* will be provided for by *section 98*.

Section 56: Information to be kept about a person’s adoption

164. *Section 56* provides a power to make regulations to prescribe the information that an adoption agency must keep in relation to a person’s adoption, the form it should take and the way it should be kept. The information kept will be about the adopted person, his birth parents and siblings, his adoptive parents and siblings, other relatives, and social workers’ reports. *Subsection (3)* provides a power to make regulations for the transfer of information between adoption agencies, for example where the original adoption agency is ceasing to operate.

Section 57: Restrictions on disclosure of protected etc. information

165. *Section 57* makes provision for protected information. Protected information is defined in *subsection (3)*. It is any identifying information (defined in *subsection (4)*) sought by someone other than the person it is about, and any information held under *subsection (2)*. Under *subsections (1) and (2)* protected information must only be disclosed in accordance with these provisions.
166. Identifying information would include names, residential, educational and employment addresses, photographic or audio-visual material, case records and legal and medical information held by adoption agencies. The information held under *subsection (2)* is any information held by an adoption agency, which it has obtained from the Registrar General under *section 79(5)* or any other information that would enable an adopted person to obtain a certified copy of his birth record or any information about an entry in the Adoption Contact Register about the adopted person.

167. *Subsection (5)* provides that the disclosure of protected information where an agreement is reached that includes the adoption agency is not prevented by anything in this group of sections. This is intended to allow agreement between the adoption agency, the adoptive parents and the birth parents for the sharing of protected information. *Subsection (6)* provides a power to prescribe by regulations the circumstances where an adoption agency must disclose protected information to someone other than the adopted person. This power can be exercised to oblige an agency to disclose information or to enable them to do so if certain conditions are satisfied. This would, for example, provide for the disclosure of protected information where it would assist an inquiry under *section 17* of the Act.

Section 58: Disclosure of other information

168. *Section 58* provides for the disclosure of information held under *section 56* which is not defined as protected information. *Subsection (2)* enables an agency to disclose this information to any person for the purposes of its functions. This could, for example, be background information about the child's progress to be disclosed to his birth family, without disclosing his new identity or his whereabouts. *Subsection (3)* provides that an adoption agency must disclose prescribed information to a prescribed person in prescribed circumstances.

Section 59: Offence

169. *Section 59* enables regulations to provide that a registered adoption society which discloses information in contravention of *section 57* is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. *Section 14* provides a default power for the appropriate Minister. This could in appropriate cases be used to deal with local authorities that disclose information in contravention of these provisions.

Section 60: Disclosing information to adopted adult

170. *Section 60* makes provision for the disclosure of information held by adoption agencies and courts to adopted adults. It gives the adopted adult the right under *subsection (2) (a)* to receive any information held by the adoption agency necessary to enable him to obtain a certified copy of his birth record, unless the High Court orders otherwise. Under *subsection (3)*, the High Court may allow the adoption agency to withhold this information if it believes that the circumstances are exceptional. An example of when the High Court may exercise this power is where it is considered that disclosure would lead to a serious crime being committed. *Subsection (2) (b)* allows the adopted adult to receive prescribed information his adoptive parents received under *section 54*. Under *subsection (4)* the adopted person has the right to request from the court a copy of a prescribed document or prescribed order relating to his adoption. The documents will be prescribed in rules made by the Lord Chancellor. Under *subsection (5)* the documents which the adopted person may request from the court will not contain protected information.

Section 61: Disclosing protected information about adults

171. *Section 61* provides for the process that an adoption agency must undertake when an application is made for the disclosure of protected information about an adult. *Subsection (1)* provides that this process applies where any person applies to the appropriate adoption agency (defined at *section 65(1)*) for protected information and none of that protected information is about a person who is a child at the time that the application is made.
172. *Subsection (2)* provides that the agency is not obliged to process an application for disclosure of information unless it considers that it is appropriate to do so. Where an agency does consider that it is appropriate to proceed with the application,

subsection (3) obliges it to take all reasonable steps to obtain the views of the person the information is about as to the disclosure of that information.

173. *Subsection (4)* gives the agency discretion to proceed with the application to disclose the information if it considers it appropriate to do so. *Subsection (5)* provides that in making a decision as to whether or not it is appropriate to proceed with the application or to disclose the information, the agency must consider the welfare of the adopted person, any views that it has obtained under *subsection (3)*, any matters that may be prescribed in regulations and all the other circumstances of the case.
174. Under *subsection (6)*, this section does not apply to a request for information under *section 60(2)*, where a request is made by an adopted adult for either the information needed to obtain a certified copy of his birth record or the information given by an agency to his adopters under *section 54*. Applications by an adopted person for the disclosure of all other protected information fall within this section or *section 62*. *Section 62* does not apply to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of *section 57(6)*.

Section 62: Disclosing protected information about children

175. *Section 62* provides for the process that an adoption agency must undertake when an application for disclosure of protected information is made to it, and any of that information is about a person who is a child at the time that the application is made. This is set out in *subsection (1)*.
176. *Subsection (2)* provides that the agency is not obliged to proceed with an application for disclosure of information unless it considers that it is appropriate to do so. If the agency decides to proceed with the application, *subsection (3)* provides that where the information relates to a child, the agency must take all reasonable steps to obtain the views of any parent or guardian of the child as to the disclosure of the information. If the agency considers it appropriate to do so, it must also seek the child's views as to the disclosure of the information. In doing so the agency must take into account the child's age and understanding, including the ability to understand the consequences of what is being asked, and all the other facts of the case.
177. Where the agency decides to proceed with the application, *subsection (4)* provides that where the information relates to a person who has attained the age of 18 at the time that the application is made, the agency must take all reasonable steps to obtain his views as to the disclosure of the information.
178. *Subsection (5)* gives the agency discretion to disclose the information if it considers it appropriate to do so. This discretion must be exercised having regard to *subsections (6) and (7)*. *Subsection (6)* provides that in deciding whether or not to proceed with an application for the disclosure of information, or to disclose that information, where any of it relates to a person who at the time the application is made is an adopted child, that child's welfare must be the paramount consideration. In the case of any other child the agency must have particular regard to his welfare. *Subsection (7)* provides that in deciding whether or not to proceed with an application to disclose information, or to disclose any information, the agency must consider the welfare of the adopted person (where they are not an adopted child), any views obtained under *subsections (3) and (4)*, any prescribed matters and all the other circumstances of the case.
179. Under *subsection (8)* (as under *section 61(6)* - see paragraph 174) this section does not apply to a request for information under *section 60(2)*, where a request is made by an adopted adult for either the information needed to obtain a certified copy of his birth record or the information given by an agency to his adopters under *section 54*. Applications by an adopted person for the disclosure of all other protected information fall within this section or *section 61*. *Section 62* does not apply to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of *section 57(6)*.

Section 63: Counselling

180. *Section 63* makes provision in respect of counselling for those seeking information under these sections, those considering consenting to or objecting to the disclosure of information, and those considering an agreement for the sharing of protected information under *section 57(5)*. *Subsection (1)* provides a power to make regulations to require adoption agencies to provide information about access to counselling services and *subsection (2)* provides for regulations to require adoption agencies to make arrangements to secure the provision of counselling to those seeking information in prescribed circumstances. The intention is to make counselling available to an adopted person, if he wishes to access it, where he applies to the agency for the disclosure of protected information about another person. *Subsection (3)* provides a power to make regulations to enable adoption agencies to disclose the information that is needed by the counselling agency for the purposes of providing the counselling. Where the counselling is to be provided outside the United Kingdom, the adoption agency may require the person who is to receive the counselling to pay a prescribed fee.

Section 64: Other provision to be made by regulations

181. *Section 64* provides for regulation making powers which will provide for the balancing of the rights of individuals, and the operation of the new duties for adoption agencies and the Registrar General under *sections 56 to 65*. *Subsection (1)* provides a power to make regulations concerning the operation by adoption agencies of their functions under *sections 56 to 65*, and the manner in which information may be received by adoption agencies.
182. *Subsection (2)* provides a power to make regulations for the recording of agreements made by virtue of *section 57(5)* and the information to be provided on an application for the disclosure of information under these provisions.
183. *Subsection (3)* provides a power to make regulations requiring adoption agencies to give prescribed persons prescribed information about their rights or opportunities to obtain information or to give their views as to its disclosure. For example, that adoption agencies must inform the birth parents and adoptive parents at the time of the placement of the child of the rights for individuals to request protected information.
184. Under *subsection (3)(b)*, regulations may be made to require adoption agencies to seek prescribed information from, or give prescribed information to, the Registrar General. Adoption agencies will be required to obtain information held on the adopted person's birth record from the Registrar General, if the agency receives a request from the adopted person for that information.
185. *Subsection (4)* provides a power to make regulations for the Registrar General to be required to disclose to any person any information which he needs to help him contact the appropriate adoption agency (defined in *section 65(1)*) and to disclose to the appropriate adoption agency information required by that agency about an entry relating to the adopted person on the Adoption Contact Register. This may assist the adoption agency in ascertaining the wishes of an adopted person or of a particular relative in relation to contact with the other party.
186. *Subsection (5)* provides a power to make regulations for the payment of fees to the adoption agency by anybody who applies to the agency under *sections 60, 61 or 62* for information. The exception is that the adopted person cannot be charged in respect of any information disclosed to him under this group of sections about any person who but for his adoption would be related to him by blood, including half-blood, or marriage. *Subsection (6)* provides a power to make regulations for the payment of a fee by an adoption agency to the Registrar General for his disclosure of information from the Adoption Contact Register.

Section 65: Sections 56 to 65: Interpretation

187. *Section 65(1)* defines some of the terms used in *sections 56 to 65*. *Subsections (2)(a) and (b)* set out the circumstances in which Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland are to make regulations. *Subsection (3)* enables Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland, when they make regulations under *section 63(2)*, to make supplementary, transitional and other provision. *Subsection (4)* provides that the Chancellor of the Exchequer must approve any regulations that set out a fee for payment by an adoption agency to the Registrar General for his disclosure of information from the Adoption Contact Register. *Subsection (5)* provides that the Registrar General must approve any regulations about the way in which applications to him for the disclosure of information are made.

Chapter 4 – Status of Adopted Children

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

Section 66: Meaning of adoption in Chapter 4

189. *Section 66* sets out the meaning of “adoption” in Chapter 4. For the purpose of this Chapter adoption means adoption by adoption orders made in England, Wales, Scotland or Northern Ireland, the Channel Islands, the Isle of Man and countries outside the British Islands which have implemented the Hague Convention, overseas adoptions and adoptions recognised by the law of England and Wales and effected under the law of any other country. References to adoption in this Chapter are to adoptions effected after the date on which Chapter 4 comes into force. References in other enactments to an adopted person within the meaning of Chapter 4 include a reference to an adopted child under the Adoption Act 1976.

Section 67: Status conferred by adoption

190. *Section 67* provides for the determination of the legal status of an adopted child. *Subsection (1)* provides that the child is to be treated as if born as the child of the adopter or adopters. *Subsection (2)* provides that an adopted child is the legitimate child of the adopters or adopter and where a person is adopted by a couple or a partner of his parent, he is to be treated as if he had been born as the child of the relationship of that couple.
191. *Subsection (3)(a)* provides that in an adoption by the partner of a parent the adopted person is *only* to be treated in law as the child of the adopter and the partner of the adopter. In any other circumstances *subsection (3)(b)* provides that an adopted person is to be treated *only* in law as the child of the adopter or adopters. *Subsection (4)* provides that where the adopter is both a sole adopter and the natural parent, *subsection (3)(b)* is to have no effect with respect to anything dependant on the relationship to that parent, for example entitlement to property. A single parent may, for example, adopt his own child so that the child may cease to be illegitimate (although this now happens rarely).
192. *Subsection (5)* provides that this section has effect from the date of an adoption order being made in respect of an individual. *Subsection (6)* confirms that subject to the other provisions of Chapter 4 and Schedule 4, this section applies for the interpretation of enactments or instruments passed both before and after a person’s adoption and has effect as respects events taking place after the adoption order has been made.
193. The provisions in this section are intended only to clarify how an adopted child should be treated in law. They do not touch on the biological or emotional ties of an adopted child, nor are they intended to.

Section 68: Adoptive relatives

194. *Section 68* (1) and (2) enable a relationship that exists as a consequence of *section 67* to be described in law as an adoptive relationship. An adopter may be referred to as an adoptive parent or as an adoptive father or an adoptive mother depending on the circumstances of the case. However, it does not prevent any term not qualified by the word “adoptive” from being treated as including an adoptive relative.
195. *Subsection (3)* provides that where there is a reference to the adoptive mother and father of child, if the child has been adopted within a same sex relationship, whether by a couple or by the partner of a parent, the reference should be read as a reference to the child’s adoptive parents.

Section 69: Rules of interpretation for instruments concerning property

196. *Section 69* sets out the rules of interpretation for any instrument concerning the disposition of property. These rules are subject to any contrary indication and to Schedule 4 to the Act.
197. *Subsection (2)* applies where a disposition depends on the date of birth of a child or children of an adoptive parent(s). For the purposes of the disposition the adopted person is to be treated as having been born on the date of the adoption order. Where two or more people have been adopted on the same date they are to be treated as if they had both been born on that date but in the order of their actual births. *Subsection (3)* gives examples of phrases in wills on which *subsection (2)* can operate.
198. *Subsection (4)* allows an adopted person to retain certain interests vested in him before his adoption. *Subsection (5)* provides that, where it is necessary to determine for the purposes of a disposition of property whether a woman can have a child, it is to be presumed that when she has attained 55 years of age she will not adopt a child after the execution of the instrument, and if she does that child will not be treated either as her child or, if she is adopting as part of a couple, the child of the other one of the couple for the purposes of that instrument.

Section 70: Dispositions depending on date of birth

199. *Section 70* provides that where a child is born illegitimate and adopted by one of his natural parents as the sole adoptive parent, the date of his birth rather than the date of his adoption is taken into account in respect of entitlement to property. *Subsection (2)* sets out an example of when this might apply.

Section 71: Property devolving with peerages etc.

200. *Section 71* provides that adoption does not affect the descent of any peerage or dignity or title of honour or the devolution of any property devolving with such titles. Thus, unless there is a contrary intention expressed in the instrument, an adopted person cannot inherit such a title or any associated property from his adoptive parents. Likewise, the natural child of a Peer who is adopted will inherit a peerage, dignity or title of honour and any property devolving with such titles from his birth parents. *Subsection (3)* provides that exceptions may apply where a contrary intention is expressed in the instrument.

Section 72: Protection of trustees and personal representatives

201. *Section 72* provides for the protection of trustees or personal representatives who convey or distribute property in ignorance of the making or revocation of an adoption order.

Section 73: Meaning of disposition

202. *Section 73* defines the terms “disposition” and “power of appointment” for the purposes of Chapter 4. *Subsection (3)* confirms that the provisions of this Chapter apply equally to an oral disposition as to a written one. For the purposes of Chapter 4, *subsection (4)* provides that the date of death of the testator is the date a will or codicil is treated as being made and *subsection (5)* provides that the provisions of the law of intestate succession are to be treated as if they are contained in an instrument that the deceased executed while of full capacity immediately before his death.

Section 74: Miscellaneous enactments

203. *Section 74* provides that the general principle of *section 67* (that an adopted person is to be treated as if he had been born as the child of the adopter or adopters) is not to apply for the purposes of marriages within prohibited degrees of relationship or to incest, and for these purposes an adopted person remains part of his natural family. The only exception is that an adopted person cannot marry his adoptive parent, as this falls within the restrictions set out in the table of kindred and affinity in Schedule 1 to the Marriage Act 1949. Otherwise there are no restrictions on marriage within an adoptive family.
204. *Subsection (2)* lists other enactments which deal with questions of nationality and immigration, and to which the general principle of *section 67* is also not to apply.

Section 75: Pensions

205. *Section 75* provides that *section 67(3)*, (the rule that an adopted child is to be treated only as the child of the adopter(s) or, in the case of an adoption by a partner of a parent, only as the child of the adopter and the natural parent to whom he is a partner), does not affect an adopted person’s entitlement to a pension payable to or for his benefit which is in payment at the time of his adoption.

Section 76: Insurance

206. *Section 76* provides that any rights and liabilities under any insurance policy that a natural parent has effected for the payment on the death of his child of funeral expenses are transferred by virtue of the adoption of that child to the adoptive parents. The adopters are to be treated as if they took out the policy themselves. *Subsection (2)* makes clear that references in *subsection (1)* to adoptive parents are to be read, in the case of an adoption by a partner or a parent, as referring to the adopter and the other one of the couple.

Chapter 5 - The Registers

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

Section 77: Adopted Children Register

208. *Section 77* places a duty upon the Registrar General to continue to maintain the Adopted Children Register and provides for entries to be made in the register. *Subsection (2)* provides that the Adopted Children Register is not to be open to public inspection or search. *Subsection (3)* provides that entries may not be made on the Register unless they are made by adoption orders or by the amendment of adoption orders (*subsection (6)* and Schedule 1). *Subsection (4)* provides that a certified copy of an entry on the Register is evidence of an adoption to which it relates. *Subsection (5)* provides that where the birth information is contained in the Adopted Children Register, a certified copy of that entry is to be treated as a certified copy of an entry in the registers of live births.

Section 78: Searches and copies

209. *Section 78* places a duty on the Registrar General to maintain an index of the Adopted Children Register at the General Register Office. *Subsection (2)* provides that any person may search the index of the Register and obtain a certified copy of any entry. However, a person is not entitled to have a certified copy of an entry in the Adopted Children Register relating to an adopted person who has not attained the age of 18 years unless prescribed particulars have been provided to the Registrar General (*subsection (3)*). *Subsection (4)* provides that the terms, conditions and regulations as to payment of fees and otherwise applicable under the Births and Deaths Registration Act 1953, and the Registration Services Act 1953, are to apply in respect of searches, and supplies of certified copies, under *subsection (2)*.

Section 79: Connections between the register and birth records

210. *Section 79* places a duty on the Registrar General to make traceable the connection between any entry in the registers of live-births or other records which has been marked “Adopted” and any corresponding entry in the Adopted Children Register. *Subsection (2)* provides that public access to this index is prohibited. *Subsection (3)* provides that any such information held under *subsections (1)* and *(2)*, and any other information which would enable an adopted person to obtain a certified copy of the record of his birth, may only be disclosed by the Registrar General in accordance with this section. *Subsection (4)* provides that in relation to a person adopted before the appointed day a court may in exceptional circumstances order the Registrar General to give such information to a person. The appointed day is defined in *subsection (9)* as the day appointed for the commencement of sections 56 to 65. *Subsection (5)* provides that the Registrar General is to provide on application the appropriate adoption agency with any information mentioned in *subsection (3)*. *Subsection (6)* provides that for people adopted before the commencement of sections 56 to 65 Schedule 2 applies and *subsection (5)* does not.
211. *Subsection (7)* enables the Registrar General to make regulations to set out the manner in which applications must be made by an adopted person aged under 18 who intends to be married requesting information as to whether the person whom they intend to marry may be within the prohibited degrees of relationship for the purpose of the Marriage Act 1949. *Subsection (8)* enables the Registrar General to make regulations requiring the payment of a prescribed fee in respect of information given under *section 79*.

Section 80: Adoption Contact Register

212. *Section 80* places a duty on the Registrar General to continue to maintain in accordance with regulations the Adoption Contact Register at the General Register Office. The Adoption Contact Register is a register in two Parts designed to facilitate contact between adopted persons and their birth relatives where both parties have expressed a wish for such contact. *Subsection (2)* enables the Registrar General to prescribe in regulations the information about adopted persons to be included in Part 1 of the Adoption Contact Register. *Subsection (3)* provides that the Registrar General may make an entry for an adopted adult in Part 1 of the Register if a record of his birth is kept by the Registrar General and he is satisfied that the adopted person has such information necessary to obtain a copy of his birth record. Under *subsection (4)*, the Registrar General is able to make regulations prescribing the information about relatives of adopted persons to be included in Part 2 of the Adoption Contact Register. It is intended that these regulations will cover information similar to that included in the regulations made under *subsection (2)*, such as names and addresses. *Subsection (5)* provides that the Registrar General may only make an entry in Part 2 of the Register for a person who has attained the age of 18 and if the Registrar General is satisfied that he is a relative of an adopted person and has such information as is necessary to enable him to obtain a certified copy of the record of the adopted person’s birth. *Subsection (6)* enables the Registrar General to make regulations providing for the disclosure of

information contained in one Part of the Register to persons included in the other Part of the Register. Such regulations may provide, for example, that information held on the Register should only be given to the adopted person in order to enable them to make a choice as to whether to initiate contact with their relative(s). *Subsection (6)* also provides that regulations may be made by the Registrar General to set fees for the making or alteration of entries in the Register, and the disclosure of information contained in it.

Section 81: Adoption Contact Register: supplementary

213. *Section 81* provides that the Adoption Contact Register is not to be open to public inspection or search. *Section 81(2)* defines relatives. This definition will include, for example, parents, siblings, grandparents, great-grandparents, uncles, aunts, cousins, nephews and nieces including half blood or by marriage.

Section 82: Interpretation

214. *Section 82* provides interpretation in respect of the provisions in Chapter 5. It defines the terms “records” and “registers of live-births”. It also provides that the Registrar General may maintain in any form any register, record or index he is required to keep under these provisions.

Chapter 6 – Adoptions with a Foreign Element

215. The provisions in this Chapter incorporate many of the measures of the Adoption (Intercountry Aspects) Act 1999 and extend those measures with new safeguards and penalties.
216. The Adoption (Intercountry Aspects) Act 1999 (“the 1999 Act”) applies to England and Wales and to Scotland and amends both the Adoption Act 1976 and the Adoption (Scotland) Act 1978. It makes provision to regulate intercountry adoption, enables (together with equivalent Northern Ireland legislation) the United Kingdom to ratify the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and introduces sanctions against those failing to follow the proper procedures for bringing children into the United Kingdom. The 1999 Act also clarifies that local authorities have a duty to provide, or arrange to provide, an intercountry adoption service and provides that children who are the subject of a Convention adoption will receive British nationality automatically.
217. The 1999 Act will largely be repealed for England and Wales when this Act is implemented, as the majority of the provisions amend the Adoption Act 1976 and have been incorporated into this Act. Sections 1 (power to make regulations giving effect to the Convention), 2 (Central Authorities and accredited bodies) and 7 (amendments to the British Nationality Act 1981) and Schedule 1 (which sets out the text of the Convention so far as material) of the 1999 Act will remain. *Section 144(1)* defines a Convention adoption order as an adoption order which is made by virtue of regulations made under section 1 of the 1999 Act. The regulations which are to be made under section 1 of the 1999 Act will apply, with or without modification, the provisions of this Act, for example the conditions which must be satisfied before an application for a Convention adoption order may be made. Convention adoptions made in a country outside the British Islands are recognised, see *section 66(1)*.

Section 83: Restriction on bringing children in

218. *Section 83* imposes restrictions on British residents bringing or causing someone else to bring a child habitually resident outside the British Islands into the United Kingdom with the intention of adopting the child in the United Kingdom, unless the person complies with prescribed requirements and meets prescribed conditions. It also makes it a criminal offence for a British resident to bring or cause someone else to bring a child habitually resident outside the British Islands who he has adopted within the last six

months into the United Kingdom, unless he complies with prescribed requirements and meets prescribed conditions. A person would be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum, or both, or, in the event of the case being referred to the Crown Court, to up to twelve months' imprisonment or an unlimited fine, or both.

219. It is intended that regulations will require the British resident to be assessed and approved as suitable to adopt by a United Kingdom adoption agency prior to bringing a child into the United Kingdom.
220. The restrictions in this section do not apply if the child is intended to be adopted under a Convention adoption order (*subsection (2)*), as the provisions in the Hague Convention will apply in such circumstances.
221. This section replaces and strengthens section 56A of the Adoption Act 1976 which was inserted by section 14 of the Adoption (Intercountry Aspects) Act 1999. It extends to England and Wales only, but *section 133* makes similar provision for Scotland.

Section 84: Giving parental responsibility prior to adoption abroad

222. *Section 84* provides that the High Court may make an order for the transfer of parental responsibility for a child to prospective adopters who are not domiciled or habitually resident in England or Wales but who intend to adopt the child outside the British Islands. An order cannot be made where the prospective adopters meet the requirements of domicile or habitual residence to allow an adoption order to be made in England and Wales. Regulations will prescribe the requirements which must be satisfied before an order may be made (*subsection (3)*). An application for an order may not be made unless the child's home has been with the applicant(s) at all times during the preceding 10 weeks (*subsection (4)*). An order under this section has the same effect as an adoption order in extinguishing parental responsibility (*subsection (5)*). *Subsection (6)* provides that regulations may be made to apply any provision of this Act which refers to adoption orders to orders made under this section with or without modifications.

Section 85: Restriction on taking children out

223. *Section 85* imposes restrictions on taking children who are Commonwealth citizens or habitually resident in the United Kingdom out of the United Kingdom for the purpose of adoption. It is an offence unless the proposed adopters have obtained an order under *section 84* or the child is removed under the authority of an order under section 50 of the Adoption (Scotland) Act 1978 or Article 57 of the Adoption (Northern Ireland) Order 1987. A person would be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum, or both, or, in the event of the case being referred to the Crown Court, to up to twelve months' imprisonment or an unlimited fine, or both.

Section 86: Power to modify sections 83 and 85

224. *Subsection (1)* provides a power to provide by regulations that section 83 does not apply to natural parents, natural relatives, guardians or a partner of the parent of the child. *Subsection (1)* also enables conditions to be prescribed which would need to be met for a group to be excluded from the application of section 83. Different provision can be made in relation to different cases.
225. *Subsection (2)* provides a power to provide that section 85(1) applies with modification or does not apply if the prospective adopters are parents, relatives, guardians (or one of them is) or the prospective adopter is a partner of a parent of the child. Again, subsection (2) enables conditions to be prescribed which would need to be met for a group to be excluded from the application of section 85 or for section 85 to be modified in relation to that group. Different provision can also be made in relation to different cases.

226. *Subsection (3)* provides that the first set of regulations to be made under section 86 are to be subject to the affirmative resolution procedure. Under *subsection (4)* regulations under the new section will be made by the Secretary of State in consultation with the National Assembly for Wales.

Section 87: Overseas adoptions

227. Overseas adoption orders are recognised automatically in England and Wales. *Section 87* provides that for the purposes of the Act and the Adoption Act 1976 overseas adoptions are those specified by an order made by the Secretary of State describing adoptions effected under the law of any country or territory outside the British Islands, and are not Convention adoptions. Regulations may set out requirements that ought to be met in order for an adoption to be classified as an overseas adoption. The regulations may be made by the Secretary of State, following consultation with the National Assembly for Wales. *Subsection (3)* imposes a duty on the Secretary of State to exercise his powers to make an order so as to secure that adoptions made after that date are not overseas adoptions if he considers they are not likely within a reasonable time to meet the requirements prescribed by regulations. *Subsection (5)* enables the Secretary of State to provide in the order the manner in which evidence of any overseas adoption may be given.
228. It is intended to review which countries' adoption orders will be recognised in the United Kingdom. This section allows the Secretary of State to specify clear criteria that must be met for a country to be included on the revised "designated list". It also ensures that the status of those adopted from countries included on the previous "designated list" is not undermined by the introduction of a new order.

Section 88: Modification of section 67 for Hague Convention adoptions

229. *Section 88* provides that where the High Court, on an application, is satisfied that the conditions set out in *subsection (2)* are met, it may direct that *section 67(3)* (which provides for the status conferred by adoption) does not apply or does not apply to any extent which may be specified in the direction. The reason for this provision is as follows. Adoption law of the United Kingdom recognises only one type of adoption, which is full adoption, and this creates a new and irrevocable legal relationship between the child and adoptive parents which severs all legal ties between the child and his birth parents. A child adopted in England and Wales is to be treated in law as not being the child of any person other than the adopters. In some countries, however, certain forms of adoption do not have the effect of totally severing all ties from the birth parents and these are known as simple adoptions.
230. *Article 26* of the Hague Convention provides for the recognition of both full and simple adoptions. *Article 27* of the Hague Convention allows a receiving State to convert a simple adoption into a full adoption if its law so permits and provided the birth parents and relevant parties under *Article 4* of the Hague Convention have given their consent to a full adoption. Where the receiving State is England and Wales, the Central Authority will ensure that in all cases the birth parents are informed of the effects of a simple adoption in England and Wales and seek to obtain their consent to a full adoption prior to a Convention adoption being made in a country outside the British Islands or a Convention adoption order being made here. Where the receiving State is not England and Wales, it is possible that the child may be brought to this country in circumstances where simple adoptions are recognised, both in the State of origin and the receiving State, and so no consent to full adoption has been given. In those cases the adoption will still be treated as a full adoption by operation of law, but if any issue of status arises where it is felt it would be more favourable to the child to treat the adoption otherwise than as a full adoption, an application may be made to the High Court.

Section 89: Annulment etc. of overseas or Hague Convention adoptions

231. *Section 89* provides for the High Court to annul a Convention adoption or a Convention adoption order on the grounds that the adoption is contrary to public policy. Where an overseas adoption or a determination under *section 90* is shown to be contrary to public policy or the authority which made the adoption or determination was not competent to entertain the case, the High Court may order that the overseas adoption or determination should cease to be valid.

Section 90: Section 89: supplementary

232. *Section 90* makes supplemental provision in respect of annulment of overseas or Convention adoptions and Convention adoption orders. It specifies that the application must be made in the prescribed manner and within any prescribed period (*subsection (1)*), that the adopted person or adopter(s) must have been habitually resident in England and Wales immediately before the application (*subsection (2)*), and that the court is bound by any finding of fact by the authority when determining whether that authority was competent to entertain the case (*subsection (3)*).

Section 91: Overseas determinations and orders

233. *Section 91* makes further provision in relation to overseas determinations and orders. It provides that where any authority of a Convention country (other than the United Kingdom) or the Channel Islands, the Isle of Man or any British overseas territory has the power to authorise or review the authorisation of an adoption order made in that country or territory, or to give or review a decision revoking or annulling an adoption order or a Convention adoption, that determination will be recognised in the United Kingdom. This is subject to *section 89* and any subsequent determination.

Chapter 7 - Miscellaneous

234. *Chapter 7* restates with amendment the criminal offences in sections 11 and 57 of the Adoption Act 1976. These deal with restrictions on making arrangements for adoption and payments offered, made or received in consideration of an adoption. In addition it introduces a new offence which deals with restrictions on preparing reports in connection with adoption. Chapter 7 also sets out who may prosecute offences under the Act.
235. In addition Chapter 7 deals with proceedings in the civil courts. It aligns provision for appeals from the magistrates' court with the procedure in the Children Act 1989 and makes provision about the hearing and reporting of proceedings under the Act. New provision is made to impose an obligation on the courts when dealing with proceedings for an adoption or placement order to draw up a timetable to ensure that the matter is dealt with without delay. In addition the role of the guardian ad litem and reporting officer set out previously in section 65 of the Adoption Act 1976 is now replaced by a similar role for an officer of the Children and Family Court Advisory and Support Service. The Act gives a new right to such officers, in connection with the hearings with which they are involved, to inspect records held by an adoption agency.
236. This Chapter also provides for recognition in England and Wales of adoption orders made in Scotland, Northern Ireland, the Channel Islands and the Isle of Man.

Section 92: Restriction on arranging adoptions, etc.

237. *Section 92* sets out the steps in relation to arranging an adoption that may only be taken by an adoption agency or a person acting in pursuance of an order of the High Court. *Subsection (2)* lists nine steps that should not be taken, for example seeking, offering or placing a child for adoption. *Subsections (3) and (4)* provide that certain steps do not apply where one or both of the prospective adopters are parents, relatives or guardians of the child, or where a prospective adopter is a partner of

a parent. *Subsection (6)* enables the Secretary of State, after consultation with the National Assembly for Wales, to make an order amending *subsections (1) to (4)* where he considers an amendment necessary or expedient. This power could be used, for example, to specify additional steps for inclusion in the list in *subsection (2)* to further protect the interests and welfare of children or other parties affected by adoption. *Subsection (5)* allows regulations to be made prescribing who should be treated as an adoption agency in respect of intercountry adoption for the purpose of this provision.

Section 93: Offence of breaching restrictions under section 92

238. *Section 93* provides that where a person contravenes *section 92(1)* he is guilty of an offence. It also provides that if the offender is an adoption society, the person who manages the society is also guilty of the offence. Defences are provided in *subsections (2) to (4)*. *Subsection (5)* sets out the penalty on summary conviction as imprisonment for a term not exceeding six months or a fine not exceeding £10,000, or both.

Section 94: Restriction on reports

239. *Section 94* provides restrictions on the preparation of certain reports in connection with adoption. *Subsection (1)* provides a regulation making power so that a person who is not within a prescribed description may not, in any prescribed circumstances, prepare a report for any person about the suitability of a child for adoption or of a person to adopt a child or about the adoption, or placement for adoption, of a child. The intention is to use this power to regulate the preparation of assessment, post-placement and post-adoption reports and to ensure that only suitably skilled or professionally qualified staff carry out the necessary evaluations and report writing. *Subsection (2)(a)* provides that an offence is committed if a person contravenes *subsection (1)*. *Subsection (2)(b)* provides that an offence is committed where someone causes a person to prepare a report or submits to any person a report which has been prepared in contravention of *subsection (1)*. *Subsection (3)* provides that where an offence is committed by a person who works for an adoption society the manager of that society is also guilty of the offence. A defence for a person charged with an offence under *subsection (2)(b)* is provided by *subsection (4)*. *Subsection (5)* sets out the penalty on summary conviction where an offence is committed as imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

Section 95: Prohibition of certain payments

240. *Section 95* prohibits certain payments or rewards in connection with the adoption of a child. *Subsection (1)* provides that this section applies to any payment (other than an excepted payment as set out in *section 96*) which is made for the adoption of a child, giving any consent for the child's adoption, or the removal from the United Kingdom of a child who is a Commonwealth citizen, or is habitually resident in the United Kingdom, to a place outside the British Islands for the purpose of adoption. *Subsection (1)* also applies to any payment in connection with certain steps taken to arrange an adoption under *section 92*, and the commissioning or preparation of reports where it would contravene *section 94(1)*.
241. *Subsection (3)* provides that an offence is committed where a person makes any payment to which this section applies, agrees or offers to make any such payment, or receives or agrees to receive or attempts to obtain any such payment. *Subsection (4)* provides the penalty on summary conviction where an offence is committed as imprisonment for a term not exceeding six months or a fine not exceeding £10,000, or both.

Section 96: Excepted payments

242. *Section 96* provides that payments may be excepted from *section 94* in certain circumstances. The intention is allow payments to be made for reasonable expenses,

such as legal and medical expenses in relation to an adoption, payments to a local authority or registered adoption society for expenses incurred for arranging for the adoption of a child whose country of origin is outside the United Kingdom, or for reasonably incurred travel and accommodation expenses where a child is being taken out of the United Kingdom for the purpose of adoption as permitted by [section 85\(2\)](#).

243. *Subsection (1)* provides that a payment is an excepted payment if it is made in compliance with a provision under this Act, the Adoption (Scotland) Act 1978 or the Adoption (Northern Ireland) Order 1987. The payment of reasonable expenses for an adoption, proposed or actual, to a registered adoption society is excepted by *subsection (2)* if it is made by a parent or guardian of a child, or by a person who adopts or proposes to adopt a child. *Subsection (3)* provides that a payment for legal or medical expenses is an excepted payment if it is incurred by a person in respect of an application to a court for an adoption order, a placement order, or an order under [section 26 \(Contact\)](#) or [84 \(Giving parental responsibility prior to adoption abroad\)](#). *Subsection (4)* provides that a payment made where a child is removed from the United Kingdom for the purpose of adoption is an excepted payment if the condition in [section 85\(2\)](#) is met, and the payment is made for reasonably incurred travel and accommodation expenses.

Section 98: Pre-commencement adoptions: information

244. [Section 98](#) amplifies the regulation-making power in section 9 to provide that the appropriate Minister may make regulations in connection with adoptions made before the appointed day (i.e. commencement of sections 56 to 65). *Subsection (1)* provides that regulations may make provision for assisting adults adopted before the appointed day to obtain information about their adoption and to facilitate contact between them and their relatives.
245. It is intended that this is to be used to provide for a system in which adoption support agencies registered to provide such services may, on application by a person adopted before the Bill is implemented or a birth relative of such a person, act as intermediaries and, with the informed consent of the adopted person, facilitate contact between him and his relatives. It is envisaged that in performing this role adoption support agencies will be obliged, where an adoption agency arranged the adoption, to seek advice and information from that agency. It is also envisaged that the adoption support agency is to be able to obtain information held by the Registrar General, where this is necessary in order to perform their intermediary function.
246. It is intended that the regulations made under *subsections (2) and (3)(a)* will set out the circumstances when adoption support agencies, adoption agencies and the Registrar General are to be able or required to disclose information to each other. For example, an adoption support agency is to be authorised to disclose information to the Registrar General or to an adoption agency. The Registrar General or the adoption agency are to be required to disclose tracing information to the adoption support agency.
247. Provision is made under *subsection (3)(b)* for regulations to be made authorising or requiring the court to disclose information to an adoption support agency. This will enable the adoption support agency to contact an adoption agency that was involved in the particular adoption to ensure that it is aware of any information that that agency holds that is relevant to the case the adoption support agency is handling. In addition, *subsection (3)* also makes express provision for regulations to impose conditions on the disclosure of information under this section so that identifying information is properly protected, for example to ensure that the appropriate consent is in place before any disclosure is made. Regulations may be made under *subsection (3)* of section 9 for unauthorised disclosure of the information provided for by [section 98\(1\)](#) to be a criminal offence punishable on summary conviction with a maximum level 5 fine.

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248. *Subsection (4)* provides that regulations may authorise the charging of prescribed fees for the disclosure of information by adoption support agencies, adoption agencies, the Registrar General and the court.
249. *Subsection (5)* provides an authorisation or requirement made under *subsection (3)(a)*, has effect of in spite of any restriction on the disclosure of information in Chapter 5 relating to the Registers. *Subsection (6)* requires the approval of the Chancellor of the Exchequer to the making of regulations under *subsections (2) and (4)* which relate to the Registrar General. *Subsection (7)* provides definitions in relation to this section.

Section 99: Proceedings for offences

250. *Section 99* sets out that proceedings for offences under *sections 9 and 59* are ordinarily to be brought by the National Care Standards Commission or the National Assembly for Wales. Such offences can only be prosecuted by another body with the written consent of the Attorney General.

Section 100: Appeals

251. *Section 100* applies the provisions relating to appeals in magistrates' courts in section 94 of the Children Act 1989 to the Act.

Section 101: Privacy

252. *Section 101* provides that proceedings under the Act may be disposed of in private in the High Court or in a county court. The position in magistrates' courts is that section 70(3) of the Magistrates' Courts Act 1980 will continue to apply and is amended consequentially in Schedule 3 to the Act. This means that only those directly concerned with the case may be present during the proceedings.
253. *Subsection (2)* ensures that the publication of information relating to adoption proceedings before any court sitting in private can be a contempt of court under the courts' inherent jurisdiction. *Subsection (3)* aligns the protection for the privacy of children concerned in proceedings under the Children Act 1989 and the Act. There will be the same power to make court rules for the magistrates' courts to sit in private in adoption proceedings. There will be the same criminal offence of publishing any material which is intended or likely to identify any child involved (or their address or school) in any proceedings under the Children Act 1989 or proceedings under this Act. This will be triable in the magistrates' courts and punishable on summary conviction by a fine not exceeding level 4 on the standard scale.

Section 102: Officers of the Service

254. *Section 102* provides that for the purposes of any relevant application (defined in *subsection (6)* as the making, varying or revoking of a placement order or a contact order under section 26, and the making of an adoption order or a parental responsibility order under section 84) and signification of consent to placement and adoption, rules must provide for the appointment of an officer of the Children and Family Court Advisory Support Service (a CAFCASS officer) in prescribed cases. *Subsection (2)* provides that rules may provide for the appointment of a CAFCASS officer in other circumstances. *Subsection (3)* sets out what these rules may provide for the officer to do. This includes a new category of work of preparing a report on matters relating to the welfare of the child in question. The report must include any matter prescribed by rules (unless the court orders otherwise) and must be made in the manner required by the court. *Subsection (5)* restricts who may act as a CAFCASS officer in certain cases to avoid any potential conflict of interest.

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

255. The powers of a CAFCASS officer have been extended under *section 103* of the Act, which creates a right for a CAFCASS officer appointed under *section 102* to examine and take copies of an adoption agency's records relating to a proposed or actual application under Part 1 of the Act in respect of the child concerned. Any copy of such a document (or part of a document) will be admissible as evidence of any matter referred to in any evidence that the officer may give in the proceedings or any report he may produce to the court in those proceedings.

Section 104: Evidence of consent

256. *Section 104* provides for a document signifying consent to be admissible in evidence without any further proof of the signature of the person who executed it when the document has been witnessed in accordance with rules.

Section 105: Effect of certain Scottish orders and provisions

257. *Section 105* provides in *subsection (1)* that a Scottish adoption order or an interim adoption order will have the same effect in England and Wales as it has in Scotland. *Subsection (2)* provides that freeing orders including any revocation or variation to them are to have effect in England and Wales as they do in Scotland. *Subsection (3)* provides for it to be an offence in England and Wales to contravene the restrictions on removing a child who is living with prospective adopters where the adoption has been agreed or where the person applying for adoption has provided the home (the provisions in sections 28 and 29 of the Adoption (Scotland) Act 1978).
258. Again these offences are to be prosecuted in the magistrates' court and the maximum penalty, set out in *subsection (3)*, is three months' imprisonment or a fine not exceeding level 5 on the standard scale, or both.
259. *Subsection (4)* allows for orders made under section 30 of the Adoption (Scotland) Act 1978 to return or not to remove a child to have effect in England and Wales as if they were orders of the High Court.

Section 106: Effect of certain Northern Irish orders and provisions

260. *Section 106* provides in *subsection (1)* for an adoption order or an interim adoption order made in Northern Ireland to have effect in England and Wales. *Subsection (2)* provides that a freeing order made in Northern Ireland, or the variation or revocation of such a freeing order be given the same effect in England or Wales as it has in Northern Ireland. *Subsection (3)* makes the same provision as *section 105(3)* in respect of the parallel provision in the Adoption (Northern Ireland) Order 1987 on restrictions on removal of a child where an adoption order is agreed or an applicant for adoption has provided a home (Articles 28 and 29 of the Adoption (Northern Ireland) Order 1987). Similarly *subsection (4)* allows for orders made under Article 30 of the Adoption (Northern Ireland) Order 1987 to return or not to remove a child to have effect in England and Wales as if they were orders of the High Court.

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

261. *Section 107* allows any document that can be used as evidence in Scotland, Northern Ireland, the Isle of Man, or any of the Channel Islands, under the provisions set out in this section, also to be used as evidence of that matter in England and Wales. This section replaces section 60 of the Adoption Act 1976 which did not extend to the Isle of Man or Channel Islands.

Section 108: Channel Islands and the Isle of Man

262. *Section 108* enables regulations made under *subsection (1)* to provide for:
- orders that are made by a court in the Isle of Man or the Channel Islands, and appear to correspond to orders made under a provision of the Act, to be given effect in England and Wales (*subsection (1)(a)*);
 - any reference in the Act to an adoption agency to include an adoption agency in the Isle of Man or the Channel Islands (*subsection (1)(b)*);
 - a reference in the Act to other legislation, such as the Children Act 1989, to include reference to corresponding legislation of the Isle of Man or the Channel Islands (*subsection (1)(c)*). An example would be where there is a reference to a care or supervision order made under the Children Act 1989;
 - a reference in the Act to the United Kingdom to also include the Isle of Man or the Channel Islands (*subsection (1)(d)*).
263. *Subsection (2)* enables regulations to modify any provision of the Act as it applies to an order made by a court in the Isle of Man or the Channel Islands or to anything done under the law of the Isle of Man or the Channel Islands. Placement by consent and placement orders are not currently provided for in the legislation of the Isle of Man or the Channel Islands. If legislation were to be brought forward, for example, to provide for placement orders in the Isle of Man or the Channel Islands, *subsection (2)* when combined with the powers under *subsection (1)* would enable England and Wales to recognise such orders.

Section 109: Avoiding delay

264. *Section 109* makes similar provision to section 11 of the Children Act 1989 and is intended to avoid delay in the court process. It imposes an obligation on the court, where it is dealing with any matter where the issue of whether a placement or adoption order should be made may arise, to draw up a timetable and give any directions that are necessary to ensure that that timetable is adhered to.

Section 110: Service of notices etc.

265. *Section 110* provides that any notice or information required to be given under the Act may be given by post.

Part 2 – Amendments of the Children Act 1989

266. *Part 2* amends the Children Act 1989. Regulations under this group of sections will be made by the Secretary of State in England and the National Assembly in Wales. The National Assembly for Wales (Transfer of Functions) Order 1999 (TFO) transferred the functions of the Secretary of State under the Children Act 1989 to the Assembly so far as those functions are exercisable in Wales. *Section 141(1)* provides that the TFO is to be treated as referring to the Children Act 1989 as amended by this Act. Consequently, references in this Part of the explanatory notes to the Secretary of State should be read accordingly.

Section 111: Parental responsibility of unmarried father

267. *Section 111* amends section 4 of the Children Act 1989 to provide that a father who is not married to the mother at the time of the child's birth is to have parental responsibility if registration or re-registration of the birth takes place according to the provisions of the Births and Deaths Registration Act 1953 and equivalent provisions for Scotland and Northern Ireland. Parental responsibility granted to an unmarried father under these provisions may only be terminated by the order of a court. Applications for the

termination may be made by any person who has parental responsibility for the child or, with leave, the child.

Section 112: Acquisition of parental responsibility by step-parent

268. *Section 112* inserts *section 4A* into the Children Act 1989 to enable a step-parent to acquire parental responsibility for a child of his spouse. This may be acquired either by agreement between the step-parent and the parents who have parental responsibility for the child, or by order of the court. This measure is intended to provide an alternative to adoption where a step-parent wishes to acquire parental responsibility for his or her step-child. It has the advantage of not removing parental responsibility from the other birth parent and does not legally separate the child from membership of the family of the other birth parent.

Section 113: Section 8 orders: local authority foster parents

269. *Section 113* amends section 9 of the Children Act 1989. Section 9(3) provides that local authority foster carers may not seek leave of the court to apply for a section 8 order (including a residence order) in respect of a child unless they have the consent of the local authority, they are a relative of the child, or the child has been living with them for three years. This section replaces the period of three years in section 9(3) with a one year period. This is intended to align the position with the residence requirement for local authority foster carers who wish to adopt a child living with them (see *section 42(4) and 44(4)*).

Section 114: Residence orders: extension to age of 18

270. *Section 114* amends section 12 of the Children Act 1989 to empower the court to direct in an appropriate case that a residence order made in favour of someone who is not the parent or guardian of a child may be extended until the child reaches the age of 18. At present a residence order ceases to have effect when the child reaches the age of 16, unless the court is satisfied that the circumstances are exceptional. *Section 114* further provides that where the court has directed that the order may be so extended, an application to vary or discharge the order may only be made with the leave of the court. The intention of this measure is to provide a further means of delivering enhanced security where the holder of a residence order who is not the child's parent is caring for the child on a long term basis.

Section 115: Special guardianship

271. Special guardianship orders are intended to meet the needs of children who cannot live with their birth parents, for whom adoption is not appropriate, but who could still benefit from a legally secure placement.
272. *Section 115(1)* inserts new *sections 14A to 14G* into the Children Act 1989 to provide for the new special guardianship order. The new sections provide for who may apply for an order, the circumstances in which orders may be made, the nature and effect of special guardianship orders, and for local authority support services for special guardians.
273. New *section 14A* provides for who may apply for a special guardianship order and the application process. The person in whose favour a special guardianship order is made is a 'special guardian'. People may apply jointly to become special guardians. They need not be married. *Subsection (2)* provides that special guardians must be 18 or over and that the parents of a child may not become his special guardian. *Subsections (3) to (5)* make provision about who may apply for an order. A court may make a special guardianship order in respect of any child on the application of:
- any guardian of the child;
 - a local authority foster carer with whom the child has lived for one year;

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- anyone who holds a residence order with respect to the child, or has the consent of all those in whose favour a residence order is in force;
 - anyone with whom the child has lived for three out of the last five years;
 - where the child is in the care of a local authority, anyone with the authority's consent;
 - in any other case, anyone who has the consent of all those with parental responsibility for the child;
 - anyone else, including the child, who has the leave of the court to apply.
274. Under *subsection (6)* the court may also make special guardianship orders in any family proceedings concerning the welfare of a child if they consider an order should be made, even if no application has been made. Family proceedings are defined in section 8(3) of the Children Act 1989 and include adoption proceedings under this Act. When considering making a special guardianship order the child's welfare is the court's paramount consideration, and the welfare checklist in section 1(3) of the Children Act 1989 applies.
275. *Subsections (7)* onwards set out the application process. Applicants must give 3 months' written notice to the local authority of their intention to apply for the order. The only exception to this is where a person has the leave of the court to make a competing application for a special guardianship order at a final adoption order hearing, in which case the 3 month period does not apply. This is in order to prevent the competing application delaying the adoption order hearing. On receipt of notice the local authority must then investigate and prepare a report to the court about the suitability of the applicants to be special guardians and any other relevant matters. Regulations may prescribe matters to be covered in the report. The local authority may arrange for someone else to carry out the investigation or prepare the report under *subsection (10)*. It is intended to use these arrangements to ensure a proper assessment process is followed for special guardians. The court may not make an order unless it has received a report covering the suitability of the applicants. It is intended to provide in secondary legislation that a CAFCASS officer is to be appointed in appropriate special guardianship proceedings.
276. New *section 14B* provides that before making a special guardianship order the court must consider whether or not to vary or discharge any other existing order made under section 8 of the Children Act 1989 (such as a contact order or residence order) and also whether a contact order (for example, to enable continued contact with the child's birth parents) should be made at the same time as the special guardianship order. The court may also on making the special guardianship order give leave for the child to be known by a new surname and give permission for the child to be taken out of the United Kingdom for any period longer than three months.
277. New *section 14C* sets out the effect of special guardianship orders. *Subsection (1)(a)* gives the special guardian parental responsibility for the child. Subject to any later order made under the Act, the special guardian may exercise parental responsibility to the exclusion of others with parental responsibility apart from another special guardian (*subsection (1)(b)*). An exception applies in those circumstances where the law provides that the consent of all parties with parental responsibility may be or is required (for example, the sterilisation of a child) (*subsection (2)(a)*). *Subsections (3) and (4)* provide that while an order is in force the child may only be known by a different surname or be removed from the United Kingdom for longer than three months with the consent of all those who have parental responsibility, or with the leave of the court.
278. The intention is that the special guardian has clear responsibility for all the day to day decisions about caring for the child or young person and for taking decisions about his upbringing. But the order retains the basic legal link with the birth parents, unlike

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adoption. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited. They retain the right to consent or not to the child's adoption or placement for adoption (*subsection 2(b)*). *Subsection (5)* provides that the special guardian must also take reasonable steps to inform them if the child dies.

279. New *section 14D* provides that, unlike adoption orders, special guardianship orders can be varied or discharged on the application of:
- the special guardian;
 - the child's parents or guardian (they may only apply with the leave of the court and leave is to be granted only if there has been a significant change of circumstances since the order was made);
 - any step parent who has parental responsibility by virtue of *section 4A* (with the leave of the court, to be granted only if there has been a significant change of circumstances);
 - anyone who had parental responsibility immediately before the special guardianship order was made (with the leave of the court, to be granted only if there has been a significant change of circumstances);
 - the child (with the leave of the court);
 - if a care order is made in respect of the child, the local authority can apply to discharge the special guardianship order;
 - anyone who has a residence order in respect of the child.
280. *Subsection (2)* provides that the court may, during any family proceedings in which a question arises about the welfare of a child who is subject to a special guardianship order, vary or discharge the order in the absence of an application.
281. New *section 14E* makes supplemental provisions, including allowing the court to set timescales for proceedings involving special guardianship applications.
282. New *section 14F* makes provision for local authority support services for special guardians, children subject to special guardianship orders and others. Each local authority must arrange to provide support including counselling, advice and information, and such other services as are prescribed in regulations (*subsection (1)*). *Subsection (2)* provides that the power to make regulations under *subsection (1)(b)* is to be exercised so as to secure that local authorities provide financial support. Regulations will be made prescribing the circumstances where local authorities must, at the request of special guardians, children subject to special guardianship orders, their parents and other prescribed persons, carry out an assessment of that person's needs for special guardianship support services (*subsection (3)*). It is intended to use these regulations to ensure that local authorities put in place a range of support services to be available where appropriate for special guardians and children subject to special guardianship orders, their parents, and where appropriate, to others, which could include members of the birth family. *Subsection (4)* gives local authorities the discretion to carry out an assessment of need for support services at the request of any other person. *Subsections (5) to (11)* govern the assessment process and, where support services are to be provided, the arrangements for their provision. As with adoption support services, the needs assessment may be carried out at the same time as an assessment of that person's needs for any other purpose (*subsection (10)*). Again, the intention is to facilitate joined up planning and provision of public services support. There is provision for local authorities to delegate assessments and the provision of special guardianship support services to other local authorities or prescribed persons (*subsection (9)*).
283. New *section 14G* obliges every local authority to establish a procedure for considering representations (including complaints) made to them in respect of special guardianship

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support services by those eligible to receive the services. *Subsection (3)* provides that in considering representations local authorities must follow any regulations made by the Secretary of State. It is intended to use these powers to require authorities to establish complaints procedures for special guardianship support modelled on the revised Children Act 1989 complaints procedure to be established under section 27 as amended by *section 117* (paragraphs 290 to 295).

284. *Subsections (2) to (4)* of *section 115* amend sections 1 and 5 of the Children Act 1989. *Subsection (3)* amends section 1 to apply the welfare checklist to special guardianship applications. *Subsection (4)* amends section 5 to make provision about the appointment of guardians for children after the death of a special guardian.
285. Further provision about special guardianship is made in Schedule 3. Schedule 3 amends the provisions added to the Children Act 1989 by the Children (Leaving Care) Act 2000 to place a duty on local authorities to consider whether to provide advice and assistance to former looked-after children aged between 16 and 21 subject to special guardianship orders, including support for employment, education and training. Where the authority determines the child is in need of advice and assistance that the special guardian cannot give him, the authority is placed under a duty to advise and befriend him and may also provide him with assistance, for example in respect of education and training.
286. *Schedule 3* also provides that the making of a special guardianship order discharges any existing care order. However, if the need arises, a care order or a residence order may be made while a special guardianship order is in force. If made, the special guardianship order is not automatically discharged but the local authority concerned or person in whose favour the residence order is made will have the right to apply for discharge or variation of a special guardianship order by new *section 14D*.

Section 116: Accommodation of children in need etc.

287. *Section 116* amends section 17(6) of the Children Act 1989 to make clear the power for local authorities to provide accommodation for children in need under that subsection (*subsection (1)*). As amended, section 17(6) permits local authorities to provide assistance in kind, accommodation or, in exceptional circumstances, cash.
288. *Subsection (2)* amends section 22 of the Children Act 1989, which provides for the general duties of local authorities towards children who are looked after by them. A looked after child is defined in section 22(1) of the Children Act 1989. As amended, section 22(1) does not apply to children who are accommodated under section 17. Should they need to be looked after children as defined in section 22(1), they will be accommodated by local authorities under section 20.
289. *Subsection (3)* amends section 24A of the Children Act 1989, which provides for advice and assistance for certain children who were looked after while aged 16 or 17. As amended, section 24A permits local authorities, in exceptional circumstances, to provide accommodation or cash to these young people. Section 24A accommodation may only be given in exceptional circumstances.

Section 117: Inquiries by local authorities into representations

290. *Section 117* amends sections 24D and 26 of the Children Act 1989 by making further provision for inquiries carried out by local authorities into representations about services provided under that Act. It implements some of the changes being taken forward as a result of the recent “Listening to People” consultation exercise on improving social services complaints procedures which require primary legislation. This section enables regulations to be made to impose time limits for the making of representations, to provide for an informal resolution stage and to extend the complaints procedure to services provided under Parts 4 and 5 of the Children Act 1989.

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291. *Subsection (1)* inserts a new 24D(1A) that enables the Secretary of State to make regulations imposing time limits on the making of representations under section 24D(1) of the Children Act 1989. Section 24D was inserted into the Children Act 1989 by the Children (Leaving Care) Act 2000.
292. *Subsections (2) to (7)* amend section 26 of the Children Act 1989, which requires local authorities to establish a procedure for considering any representations about services provided by them under Part 3 of that Act. Under the amendment made by *subsection (6)*, the Secretary of State may make regulations imposing time limits on the making of representations under that section.
293. *Subsection (3)* amends section 26(3) of the Children Act 1989 to provide that every local authority must establish a procedure for considering representations in respect of “qualifying functions”. Qualifying functions are referred to in *subsection (4)*. They include functions under Part 3 of the Children Act 1989, which are covered by section 26(3) at present, functions under Parts 4 or 5 of that Act as specified in regulations and functions under this Act as specified in regulations. The extension of the procedure to specified functions under Parts 4 and 5 of the Children Act 1989 and to specified functions under this Act will ensure that representations about the exercise of a local authority’s functions in relation to children are brought within one child-centred procedure. The regulations will be used to extend the procedure to appropriate local authority functions under Parts 4 and 5 of the Children Act 1989, without impinging on any matter which is subject to the jurisdiction of the courts.
294. New section 26(3B)(b) of the Children Act 1989, as inserted by *subsection (4)*, provides that the persons listed at *section 3(1)* of this Act and other persons to whom the arrangements for the provision of adoption support services extend will be able to make a complaint under section 27 in respect of a function specified in the regulations.
295. *Subsection (5)* amends section 26(4) to provide that the requirement to involve an independent person in the complaints procedure is subject to the provisions in the new section 26(5A) that is inserted by *subsection (7)*. New section 26(5A) enables regulations to be made providing that the requirement for an independent person does not apply in relation to the procedure for any informal resolution stage established in regulations. An informal resolution stage is currently required by the complaints procedure established in directions made under section 7B of the Local Authority Social Services Act 1970.

Section 118: Review of cases of looked after children

296. *Section 118* amends section 26 of the Children Act 1989 (review of cases of looked after children) to provide that regulations may be made to require a local authority to review the care plan of a looked after child. These requirements apply in the case of both children who are subject to a care order and those who are accommodated by the local authority. When reviewing a section 31A plan the local authority may revise the plan or make a new one where necessary (new *subsection (2)(a)(i)*). Where the child does not already have a care plan, the local authority is required to prepare one (new *subsection (2)(b)(ii)*).
297. New *subsection (2)(k)* requires the local authority to appoint a person of a prescribed description to carry out the functions listed at new *subsection (2A)* and any other prescribed functions. The manner in which that person must perform his functions will be set out in regulations. The functions listed at new *subsection (2A)* are participating in the review of the case, monitoring the performance of the authority’s functions in respect of the review and referring the case to a CAFCASS officer, if this is considered appropriate. The Lord Chancellor may by regulations extend the functions of Officers of the Service in respect of family proceedings (within the meaning of section 12 of the Criminal Justice and Court Services Act 2000) to enable them to take action with regard to cases referred to them under new *subsection (2A)(c)*.

Section 119: Advocacy services

298. *Section 119* inserts new section 26A into the Children Act 1989 to place a duty on local authorities to make arrangements for assistance to looked after children and young people leaving care who make or intend to make complaints under sections 24D and 26 of the Children Act 1989. *Subsection (2)* provides that the assistance to be provided must include representation.
299. *Subsection (3)(a)* provides that the advocacy service must not be provided by a person who is prevented from doing so by regulations. This provision will be used to ensure the independence of the service for example, by providing that no person involved in the management of the case in question or in considering the complaint may act as an advocate. *Subsection (3)(b)* provides that the arrangements must also comply with any other provision made by the regulations.
300. *Subsection (4)* provides for local authorities to monitor the provision of assistance under this section to ensure that they comply with regulations. This reflects section 26(6) of the Children Act 1989. *Subsection (5)* provides that every local authority shall give such publicity to their arrangements for the provision of assistance as they consider appropriate. This reflects section 26(8) of the Children Act 1989.

Section 120: Meaning of “harm” in the 1989 Act

301. *Section 120* clarifies the definition of harm in the Children Act 1989 to make clear that the harm a child may be at risk of suffering includes any impairment of the child’s health or development as a result of witnessing the ill-treatment of another person, such as domestic violence. “Ill-treatment” is already defined in section 31(9) of the Children Act 1989. It is broader than physical violence and includes sexual abuse and forms of ill-treatment which are not physical. Any harm a child suffers because a parent is being harassed or intimidated is caught by the definition of “harm”. The amendment will apply to all proceedings where the court applies the ‘welfare checklist’ in section 1(3) of the Children Act 1989. This includes proceedings for contact or residence orders.

Section 121: Care plans

302. *Section 121* amends section 31 of the Children Act 1989 to provide that a court may not make a care order until a care plan has been prepared by the local authority and considered by the court (*subsection (1)*). *Subsection (2)* inserts a new *section 31A* into the Children Act 1989. This places a duty on the local authority in whose favour a care order is intended to be or may be made to prepare a care plan within a timescale set by the court and to review and modify the plan, if necessary, while the application to the court is pending. A care plan prepared under new *section 31A* is to be referred to in the Children Act 1989 as a “section 31A plan”. Regulations will set out how the plan is to be drawn up and the information to be included (new *section 31A(3)*). These requirements will not be binding on an interim care order.

Section 122: Interests of children in proceedings

303. *Section 122* amends section 41 of the Children Act 1989, with the effect that applications for the making or revocation of a placement order under this Act become specified proceedings as defined in the Children Act 1989. As such a children’s guardian will be appointed and the child separately represented in every case (unless the court decides this is unnecessary). It also provides that proceedings for section 8 orders can, in circumstances established by rules of court, also be specified proceedings. Finally section 122 amends section 93 of the Children Act 1989 (rules of court) to provide that the Lord Chancellor may make rules to provide for the separate representation of children.

Part 3 -Miscellaneous and Final Provisions

Chapter 1 – Miscellaneous

Section 123: Restrictions on advertisements etc.

304. *Section 123* is a restatement and amendment of section 58 of the Adoption Act 1976. Section 58 of that Act restricts the publication of advertisements indicating that the parent or guardian of a child want that child to be adopted, that a person wants to adopt a child, or that persons other than adoption agencies are willing to make arrangements for the adoption of a child. *Section 123*, which is a United Kingdom wide provision, goes further than this. It imposes a new restriction on the distribution of such advertisements, on advertisements that a person is willing to remove a child from the United Kingdom for the purpose of adoption, and on the publication and distribution of information about how to make arrangements for the adoption of a child.
305. *Subsection (1)* provides that a person must not publish or distribute an advertisement or information to which this section applies. *Subsection (2)* provides that this section applies to an advertisement that the parent or guardian of a child wants the child to be adopted, that a person wants to adopt a child, that a person is willing to take specific steps to arrange an adoption, as set out in *section 92*, or that a person is willing to remove children from the United Kingdom for the purposes of adoption. *Subsection (3)* states that this provision also applies to information about how to do anything which, if done, would constitute an offence under *sections 85 or 93* and the mirror provisions of the Adoption (Scotland) Act 1978 and the Adoption (Northern Ireland) Order 1987, and to information about a particular child as a child available for adoption.
306. *Subsection (4)* defines publishing and distribution. This provision covers all forms of publication and distribution, including electronic means such as the internet. *Subsection (5)* provides that this section does not apply to publication or distribution by or on behalf of an adoption agency. Under *subsection (6)* the Secretary of State may by order make any amendments of this section necessary to take into account developments in technology relating to publishing or distributing advertisements or other information by electronic or electro-magnetic means.
307. Any such order cannot be made without being approved by both the House of Commons and the House of Lords. Before exercising the power provided by *subsection (6)* the Secretary of State must, under *subsection (8)*, consult the Scottish Ministers, the Department of Health, Social Services and Public Safety (in Northern Ireland) and the Assembly. *Subsection (7)* provides that the Secretary of State may make regulations to prescribe that a body outside the United Kingdom is for the purposes of section 123 to be treated as a United Kingdom adoption agency if it corresponds in its functions to a United Kingdom adoption agency. As a consequence, such a body would not then be considered to be acting in contravention of section 123 if it were to advertise in the United Kingdom. *Subsection (9)* also provides that an adoption agency includes a Scottish or Northern Irish adoption agency.

Section 124: Offence of breaching restrictions under section 123

308. *Section 124* sets out that it is an offence to breach *section 123(1)*. *Subsection (2)* provides a defence. *Subsection (3)* provides for the penalty on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

Section 125: Adoption and Children Act Register

309. *Subsection (1)* of *section 125* enables the Queen to make an Order in Council enabling the Secretary of State to establish and maintain a register to be known as the Adoption and Children Act Register. The register will cover England and may also cover Wales and/or Scotland. It will contain details of children who are suitable for adoption and

prospective adopters who have been approved to adopt a child. This information will be used to suggest adoptive families for children in cases where a local match is not suitable for the child, or cannot be found within an agreed period of time. The register will also contain additional prescribed information about such people in respect of events occurring to them after their inclusion in the register (see *subsection (1)(b)*). This provision may be used, for example, to enable the register to record information about the stability of adoptive placements.

310. *Subsection (2)* enables the Order to apply any of the provisions in *sections 126 to 131* with or without modification for the purpose of finding persons with whom children may be placed for purposes other than adoption. This provision may be used to extend the remit of the register to cover children needing other types of permanent placements, such as special guardianship.
311. The register will not be open to public inspection or search and the Order will make provision about retention of information in the register. Information will be held on the Register in any form the Secretary of State considers appropriate, but is most likely to be held electronically.

Section 126: Use of an organisation to establish etc. the register

312. *Section 126* deals with delegation of the Secretary of State's function under *section 125*. *Subsection (1)* enables the Secretary of State to delegate his function of establishing and maintaining the register to an organisation defined by *section 131(1)(a)* as including either a public body or a private or voluntary organisation. It also enables that organisation to release information entered in or compiled from information entered in the register on the Secretary of State's behalf. Where the Secretary of State enters into an agreement with an organisation under *subsection (1)* he may issue general or special directions in respect of the way in which the organisation operates the register (see *subsection (3)*). *Subsection (2)* enables the Secretary of State to make payments to the organisation in respect of this arrangement.
313. *Subsection (4)* provides that where the Secretary of State delegates his function of establishing and maintaining the register to an organisation under *subsection (1)* or he issues general or special directions to such an organisation under *subsection (3)* he must first obtain the agreement of Scottish Ministers, if the Register applies to Scotland, and of the National Assembly for Wales, if the Register applies to Wales. *Subsection (5)* provides that, where the Secretary of State delegates his function to such an organisation under *subsection (1)*, the references to the registration organisation in the remaining provisions dealing with the register are to that organisation.

Section 127: Use of an organisation as agency for payments

314. *Section 127* provides that the Order in Council may enable an organisation maintaining the register on the Secretary of State's behalf to act as an agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies. This could be used, for example, to enable the organisation to manage the payment of "inter-agency fees" (see paragraph 50 above) between adoption agencies in respect of matches suggested by the register.
315. The Secretary of State may issue general or special directions in respect of the way in which the organisation is to perform the functions under this section (*subsection (2)*). If the Secretary of State issues such directions he must first obtain the agreement of Scottish Ministers, if this provision applies to Scotland, and of the National Assembly for Wales, if this provision applies to Wales (*subsection (3)*).

Section 128: Supply of information for the register

316. *Section 128* deals with the supply of information to the Secretary of State or the registration organisation for entry in the register. The Order in Council will set out the

type of information which must be passed by adoption agencies to the Secretary of State or the registration organisation for inclusion in the register, and the time, form and manner in which that information must be given. *Subsection (3)* provides that the Order may require adoption agencies to pay a fee to the Secretary of State or the registration organisation in respect of information to be entered on the register. Such a fee would contribute towards the administrative costs of placing information on the register and would not include any element of profit. *Subsection (4)* clarifies that these requirements are subject to the parties to whom the information relates consenting to inclusion of the information on the register. Where the information relates to a child, the Order will set out who may consent to the sharing of the information on the child's behalf.

Section 129: Disclosure of information

317. *Section 129* provides that information maintained on the register may only be disclosed by the Secretary of State or the registration organisation in accordance with the statutory provisions and on any prescribed terms and conditions. Under *subsection (5)(a)* any information may be released from the register with the consent of the Secretary of State.
318. Under *subsection (2)* prescribed information held on the register may be given either to an adoption agency which is looking for suitable adoptive parents with whom to place a child, or to an adoption agency acting on behalf of approved adoptive parents who wish to adopt a child. Under *subsection (4)* the Order in Council will set out the steps which adoption agencies must take upon receipt of this information.
319. *Subsection (3)* enables information either held on the register or compiled from information held on the register to be passed to prescribed categories of persons for statistical or research purposes and other prescribed purposes. *Subsection (5)* also enables any prescribed information to be passed to Scottish Ministers, if the register applies to Scotland, and to the National Assembly for Wales, if the register applies to Wales. *Subsection (7)* enables fees to be charged in respect of information given to adoption agencies under *subsection (2)* or in respect of information given to prescribed categories of persons for statistical or research purposes, or other prescribed purposes, under *subsection (3)*. Disclosure of information otherwise than in accordance with the provisions set out in this section is an offence, punishable on summary conviction by up to three months' imprisonment or a fine not exceeding level 5 on the standard scale, or both.

Section 130: Territorial application

320. *Section 130* makes provision in respect of the territorial application of the provisions on the Adoption and Children Act Register. *Subsection (1)* sets out that in this group of sections the term "adoption agency" means a local authority in England or a voluntary adoption agency whose principal office is in England. *Subsection (2)* sets out that an Order in Council made under *section 125* can provide for any requirements imposed on English adoption agencies to apply to Scottish and/or Welsh local authorities and voluntary adoption agencies. This enables the Adoption and Children Act Register to be extended to Scotland and/or Wales. *Subsection (4)* sets out that an Order made under *section 125* can apply the provisions in *section 127* on the use of the Register as an agent for the payment of fees between adoption agencies to adoption agencies in Scotland and/or Wales.

Section 131: Supplementary

321. *Section 131* provides general interpretation in respect of the provisions in *sections 125 to 130*. *Subsection (3)* clarifies that any action taken by the Secretary of State or the registration organisation which might otherwise be an offence under *sections 93 to 95* is not an offence where the action was authorised or required to be done by virtue of these provisions.

322. *Subsection (4)* sets out that an Order made under *section 125* is subject to the affirmative resolution procedure. *Subsections (5) to (7)* set out that where the register applies to Scotland, a draft of the Order must be approved by the Scottish Parliament, and where the register applies to Wales, a draft of the Order must be approved by the National Assembly for Wales.

Section 132: Amendment of the Adoption (Scotland) Act 1978: contravention of sections 30 to 36 of Adoption and Children Act 2002

323. *Sections 30 to 36* of the Act provide for restrictions on the removal of a child who has been placed for adoption. Contravention of these restrictions will be a criminal offence in England and Wales and will be liable to prosecution in England or Wales. *Section 132* makes similar provision in Scotland under the Adoption (Scotland) Act 1978, so that if a person commits an offence in England and Wales under the removal and recovery provisions in *sections 30 to 36* of the Act he can be prosecuted in Scotland.

Section 133: Scottish restriction on bringing children into or out of United Kingdom

324. *Section 133* amends sections 50 and 50A of the Adoption (Scotland) Act 1978. *Subsection (1)* amends section 50 of the Adoption (Scotland) Act 1978 which places restrictions on taking children out of the United Kingdom for adoption. It removes the exemption of parents, guardians and relatives of the child from the restrictions. It also adds a new subsection (4) to section 50 to enable regulations to be made providing for the restrictions to apply with modifications or not to apply if the prospective adopters are parents, relatives or guardians of the child (or one of them is) or the prospective adopter is a step-parent. The new subsection 50(4) also enables regulations to prescribe conditions which must be met if the restrictions are not to apply or to apply with modification. The first set of regulations to be made under subsection 50(4) are to be subject to the affirmative resolution procedure.
325. *Subsection (2)* amends section 50A of the Adoption (Scotland) Act 1978 to impose restrictions on British residents bringing or causing someone else to bring a child habitually resident outside the British Islands into the United Kingdom with the intention of adopting the child in the United Kingdom, unless the person complies with prescribed requirements and meets prescribed conditions. It also makes it a criminal offence for a British resident to bring or cause someone else to bring a child habitually resident outside the British Islands who he has adopted within the last six months into the United Kingdom, unless he complies with prescribed requirements and meets prescribed conditions. A person would be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum (currently £5,000), or both, or, in the event of the case being referred to the Crown court, to up to twelve months' imprisonment or an unlimited fine, or both.
326. It is intended that regulations will require the British resident to be assessed and approved as suitable to adopt by a United Kingdom adoption agency prior to bringing a child into the United Kingdom.
327. The restrictions in section 50A as amended do not apply if the child is intended to be adopted under a Convention adoption order (*subsection (3)*), as the provisions in the Hague Convention will apply in such circumstances. Subsection (10) of section 50A provides a power to make regulations to specify that the restrictions do not apply where the prospective adopters are parents, guardians or relatives of the child (or one of them is) or the prospective adopter is a step-parent of the child where any prescribed conditions are met. Subsection 50A(11) provides that the first set of regulations to be made under this power are to be subject to the affirmative resolution procedure.

Section 134: Amendment of Adoption (Scotland) Act 1978: overseas adoptions

328. *Section 134* makes similar provision to *section 87* in relation to Scotland. It enables Scottish Ministers to make an order specifying the adoption orders which will be recognised in Scotland. It is intended to review which countries' adoption orders will be recognised in the United Kingdom. This section allows Scottish Ministers to specify clear criteria that must be met for a country to be included on the revised "designated list".

Section 135: Adoption and fostering: criminal records

329. The new Criminal Records Bureau (CRB) has been established under the Police Act 1997 to provide (amongst other things) for a system for vetting those who work with children, and a "one stop shop" to simplify and speed up that process.
330. The intention is that criminal record checks (known as Standard Disclosures) and enhanced criminal record checks (known as Enhanced Disclosures) should be available through the CRB on both prospective foster and adoptive parents and other adults in the same household as them.
331. Criminal record certificates cover both spent and unspent convictions, and cautions, reprimands and warnings. Enhanced criminal record certificates also include "soft information" from local police records which the chief officer of police considers relevant. This would include relevant matters which did not lead to a conviction. The process would also include a check of lists maintained by the Department of Health and the Department for Education and Skills of persons considered unsuitable to work with children, under the "one-stop shop" arrangement under the Protection of Children Act 1999. Such checks for the purpose of determining the suitability of persons to act as foster parents and adoptive parents are already specifically provided for under sections 113 and 115 of the Police Act 1997.
332. *Subsection (1)* provides that Part 5 of the Police Act 1997, which covers certificates of criminal records, is to be amended. *Subsections (2) and (3)* amend sections 113 and 115 of the Police Act to make it absolutely clear that adoptive parents, foster parents and other adults in the same household are all eligible for checks under sections 113 and 115 of the Police Act 1997.

Section 136: Payment of grants in connection with welfare services

333. *Section 136* amends section 93 of the Local Government Act 2000, which enables the Secretary of State to pay grants to local authorities in England and the National Assembly to pay grants to local authorities in Wales for welfare services. The provisions in *section 136* clarify that grants may be paid contributing to the provision of welfare services, or in connection with welfare services, as well as for their direct provision. *Subsection (4)* explicitly recognises that the Treasury must approve the proposed terms and conditions of any grant made under section 93 of the Local Government Act 2000, in addition to its amount and the manner of payment, before the grant is made.

Section 137: Extension of the Hague Convention to British Overseas Territories

334. *Section 137* enables provisions giving effect to the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption to be extended to any British Overseas Territory by Order in Council.
335. *Article 45* of the Hague Convention allows the Convention to extend to British Overseas Territories at the same time as the United Kingdom ratifies the Convention or later. For the Convention to be extended to any territory that territory must have the necessary legislation implementing the Convention in place. *Section 137* allows an Order in Council to make any provision in respect of any British Overseas Territory that would

put in place the legislation necessary to allow the Convention to be extended to that territory. In particular, *subsection (2)* permits provisions corresponding to the Adoption (Intercountry Aspects) Act 1999 and regulations made under section 1 of that Act (which will be used to give effect to the Convention in England, Wales and Scotland) to be made in respect of any British Overseas Territory.

336. *Subsections (3) to (7)* amend the British Nationality Act 1981 to ensure that where the Convention has been extended to any British Overseas Territory, a child adopted overseas under a Convention Adoption Order may acquire automatic British Overseas Territory Citizenship. British Overseas Territory Citizenship will be automatically granted if at least one of the adopters is a British Overseas Territory Citizen and, in the case of a joint adoption, both adopters are habitually resident in the United Kingdom or the relevant British Overseas Territory.

Section 138: Proceedings in Great Britain

337. The usual time limit for the prosecution of summary only offences (all offences under the Act are summary only offences except those provided for by *sections 83 and 85*) under the Act is six months after the commission of the offence (see section 127(1) of the Magistrates' Courts Act 1980). However, in some cases offences may not come to light immediately, for example where they are uncovered by an inspection or in the case of the private adoption of a baby or an infant until the child needs to be enrolled for primary school education. In those cases where it is possible that it will take some time for an offence to come to the attention of the authorities the time limit has been extended. In the case of offences committed under *sections 9, 59, 93, 94, 95 and 129, section 138* therefore extends the time limit to six years after the commission of an offence. Proceedings may be brought within six months of the date the prosecutor had sufficient evidence to warrant bringing the proceedings.

Chapter 2 - Final Provisions

Section 140: Orders, rules and regulations

338. *Section 140* provides that all subordinate legislation such as regulations, orders and rules made by the Lord Chancellor, the Secretary of State, the Scottish Ministers, the Assembly or the Registrar General under the Act is to be made by statutory instrument. A default order made under *section 14* and a commencement order made under *section 148* is not to be subject to any parliamentary scrutiny. Any statutory instruments made under *sections 92(6), 94 or 122(6)* (respectively amendments to list of prohibited steps, restrictions on reports and amendments to restrictions on advertising in light of advances in technology) or other instruments which amend primary legislation are subject to the affirmative procedure. In addition, regulations made under *section 9* which include provision for ensuring that adoption agencies give proper regard to the need for stability and permanence in the relationship of a couple in determining their suitability to adopt (as set out in *section 45(2)*) will be subject to the affirmative resolution procedure
339. Specific provision is made in section 86 to provide that the statutory instrument containing the first set of regulations is to be subject to the affirmative resolution procedure and for *section 140(2)* not to apply to that instrument. *Section 140(2)*, and therefore the negative resolution procedure, will apply to subsequent statutory instruments containing regulations to be made under *section 86*.
340. All other subordinate legislation except an Order in Council or subordinate legislation made by Scottish Ministers, the National Assembly for Wales and the Northern Ireland Assembly will be subject to the negative resolution procedure. An Order in Council made under *section 125* which relates to the Adoption and Children Act Register will, by virtue of *section 131*, be subject to the affirmative resolution procedure in each of the countries to which the Register is to apply. An Order in Council under *section 137*

is subject to the negative resolution procedure in line with the provisions in the British Nationality Act. Subordinate legislation made by the Scottish Ministers, the National Assembly for Wales and the Northern Ireland Assembly will be subject to the scrutiny of those administrations. Where the subordinate legislation is made jointly by the Secretary of State and the Assembly it will be subject to parliamentary scrutiny in the Westminster parliament.

Section 141: Rules of procedure

341. *Section 141* enables the Lord Chancellor to make rules to deal generally with all matters of procedure. This section provides in particular for rules to say where and to whom notice is given of hearings for placement and adoption orders. *Subsection (3)* provides that this notice must state the date and place of the application and that the person to whom notice is given need not attend the hearing, unless they wish to attend or the court requires it.
342. *Subsection (4)* makes provision as to whom that notice must be given. For applications for placement and adoption orders this is every person who can be found whose consent is necessary or could be dispensed with under *sections 21 or 47*. In these cases rules may prescribe that where such a person cannot be found another relative must be given such notice.
343. For applications to vary or revoke a placement order, notice should be given to each party whose consent to the placement order was necessary (or would have been required but for the dispensation provisions); for applications for an adoption order where advance consent has been given, notice should be given to each parent or guardian unless they have stated that they do not wish to be provided with such notice.

Section 144: General interpretation, etc.

344. *Section 144* provides general interpretation. One of the important definitions in this section is the definition of “appropriate Minister.” This is defined as in relation to England, Scotland or Northern Ireland, the Secretary of State and in relation to Wales the National Assembly for Wales. *Subsection (4)* provides a definition of a “couple”. This definition applies solely for the purposes of the Act and does not impact on other legislation. A couple means a married couple or two people, whether of different sexes or of the same sex, living as partners in an enduring family relationship. The latter does not include two people where one person is the other’s parent, grandparent, sister, brother, aunt or uncle (*subsection (5)*). *Subsection (6)* provides that the relationships set out in *subsection (5)* include relationships of the full or half blood and also include the relationship of an adoptive parent with his adopted child, or his former adopted child. The wording at the end of *subsection (6)* makes clear that adoptive relationships other than those set out in *subsection (6)(b)* are not included in the list at *subsection (5)*. *Subsection (7)* provides a definition of “partner” for the purposes of this Act. A person is a partner of the child’s parent if the person and the parent are a couple but the person is not the child’s parent.

Section 145: Devolution: Wales

345. *Section 145* provides that the references to the Adoption Act 1976 and the Children Act 1989 in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 are to be treated as referring to those Acts as amended by this Act. *Subsection (3)* omits the reference to section 9 of the Adoption Act 1976 from the National Assembly for Wales (Transfer of Functions) Order 1999. The entry is not needed because of the amendment to section 9 of the Adoption Act 1976 made by paragraph 4 of Schedule 4 to this Act. *Subsection (4)* provides that the functions under sections 9 and 9A of the Adoption Act 1976 exercisable by the National Assembly for Wales are to be treated as if they were made exercisable by an Order in Council under section 22 of the Government of Wales Act. This ensures that the appropriate parliamentary procedures

in the National Assembly for Wales are applied to regulations made by the National Assembly for Wales under sections 9 and 9A of the Adoption Act 1976.

Schedule 1: Registration of Adoptions

346. **Paragraph 1** of Schedule 1 makes provision for an entry of certain adoptions in the Adopted Children Register in accordance with a direction in the adoption order. It deals with the marking of entries in the registers of live-births relating to a child who has been adopted and for marking any entries in the Adopted Children Register relating to a child who has been re-adopted.
347. **Paragraph 2** makes provision for registration of adoption orders made in Scotland, Northern Ireland, the Isle of Man and the Channel Islands in the registers of live-births. It also deals with marking any entry in the Adopted Children Register relating to a person who has been re-adopted in one of these jurisdictions and for cancellation of any such marking where an order has been quashed, revoked or a successful appeal brought.
348. **Paragraph 3** deals with registration of other adoptions. It provides for registration of overseas and Convention adoptions which meet specified requirements. These are referred to as “registrable foreign adoptions”.
349. **Paragraph 4** makes provision for the amendment of orders and rectification of entries and markings in the Adopted Children Register and the registers of live-births. Paragraphs 5 and 6 deal with re-registration of birth and cancellation in registers on legitimation.

Schedule 2: Disclosure of Birth Records by Registrar General

350. In the case of adoptions taking place before the provisions for the disclosure of information under *sections 56 to 65* are enacted, Schedule 2 places a duty on the Registrar General to supply an adopted person, on application and subject to certain conditions including payment of a fee, with information to enable him to obtain a certified copy of the record of his birth (paragraph 1).
351. **Paragraph 2** provides that before the Registrar General gives any information to an applicant, the Registrar General must inform the applicant that counselling services are available to the applicant, and where they may be obtained from. If the applicant chooses to receive counselling, the Registrar General must send to the person or body providing the counselling the information to which the applicant is entitled.
352. Under paragraph 2 counselling is available at the General Register Office, or from a local authority in England, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 in Scotland, a Board in Northern Ireland, a registered adoption society or a Scottish adoption agency under the Act or a registered adoption society under Article 4 of the Adoption (Northern Ireland) Order 1987, or a registered adoption support agency. The persons or bodies listed in paragraph 3 are to be obliged to provide counselling if asked by the adopted person.
353. **Paragraph 4(1)** provides that where a person applies for information under this Schedule and was adopted before 12th November 1975, the Registrar General must not give the information to the applicant unless the applicant has attended an interview with a counsellor arranged by a person or body from whom counselling services are available. Paragraph 4(2) provides that where the Registrar General is prevented by paragraph 4(1) from giving information to a person who is not living in the United Kingdom, he may give the information to any body which he is satisfied is suitable to provide counselling to that person, and which has notified the Registrar General that it is prepared to provide such counselling.

Schedule 3: Minor and consequential amendments

354. **Schedule 3** provides for minor and consequential amendments. In particular it provides for amendments to the Adoption (Scotland) Act 1978 in order to enable cross-border placement for adoption between England and Wales and Scotland to continue.

Schedule 4: Transitional and transitory provisions and savings

355. **Schedule 4** provides for transitional and transitory provisions and savings. A number of the provisions in this Schedule amend the Adoption Act 1976 in order to enable changes to the Adoption Service which are introduced by the Act to be implemented in advance of the Act as a whole.
356. **Paragraph 3** makes provision in respect of adoption support services. Paragraph 3(1) provides that the facilities provided by local authorities as part of the service maintained under section 1(1) of the Adoption Act 1976 include such arrangements as may be required by regulations for the provision of adoption support services to prescribed persons. Sub-paragraph (2) provides that the regulations made under sub-paragraph (1) may require a local authority, on request, to carry out an assessment of the needs for adoption support services of a prescribed person. Under sub-paragraph (2)(b), where a person's needs for adoption support services are identified in an assessment, the local authority must decide whether to provide adoption support services to that person. Where a decision is taken to provide services, in prescribed circumstances, the local authority will be required to prepare a plan for the provision of services (sub-paragraph (2)(c)). The Government's intention is to use these provisions to implement its new framework for adoption support services including financial support early in respect of adoptive families and prospective adoptive families.
357. **Paragraph 4** makes provision in respect of the regulation of adoption agencies. Paragraph 4(1)(a) amends section 9 of the Adoption Act 1976 to substitute in subsections (2) and (3) "appropriate Minister" for the "Secretary of State". Paragraph 4(1)(b) inserts at the end of section 9 a new section which defines "the appropriate Minister" for the purposes of section 9 and 9A in the same way as in the Care Standards Act 2000 and the Act. This allows either joint or separate regulations to be made under section 9 of the Adoption Act 1976. Paragraph 4(2) provides that until section 9(2) of the Adoption Act 1976 is repealed section 36A of the Care Standards Act 2000 (inserted by section 16 of the Act) is to have effect as if after the reference to this Act in subsection (1) there were inserted "or under section 9(2) of the Adoption Act 1976." This means that section 36A will apply to the functions of the registration authority under the Adoption Act 1976 as well as under Part 2 of the Care Standards Act 2000 and Chapter 2 of the Act until that section of the Adoption Act 1976 is repealed.
358. **Paragraph 5** inserts a new section 9A into the Adoption Act 1976 in respect of independent reviews of determinations. This paragraph provides for the establishment of a review procedure in respect of qualifying determinations made by adoption agencies. A person in respect of whom a determination specified in regulations has been made may apply to a panel established by the appropriate Minister for a review of the relevant determination. It is intended to use this provision to give early effect to the White Paper commitment to provide prospective adopters with a right to request a referral to a panel run by an independent organisation, where an adoption agency indicates that it is minded to turn down their application to adopt.
359. Regulations may be made under new *subsection 9A(3)* dealing with the duties and powers of a panel (including the power to request a contribution towards the cost of a review from the adoption agency which made the original determination), administration and procedures, appointment of panel members, payment of expenses, the duties of adoption agencies in connection with reviews and the monitoring of reviews.

*These notes refer to the Adoption and Children Act 2002 (c.38)
which received Royal Assent on 7th November 2002*

360. New *subsection 9A(4)* enables the Secretary of State or the Assembly to delegate functions in relation to the panel to an organisation to perform on his behalf. “Organisation” is defined as including a public body and a private or voluntary organisation. *Subsection 9A(6)* enables the Secretary of State or the Assembly to make payments to such an organisation and under *subsection 9A(5)* the organisation must perform its functions in accordance with any general or special directions which the Secretary of State or the Assembly may give.
361. [Paragraph 10](#) amends section 13 of the Adoption Act 1976 to provide that the time a child should live with the applicants before a Convention adoption order is made is 6 months.
362. [Paragraph 11](#) amends section 56 of the Adoption Act 1976 to remove the exemption of parents, guardians and relatives from the restrictions on the removal of children for adoption outside Great Britain. It inserts a power to make regulations to specify that the restrictions do not apply or apply with modification where the prospective adopters are parents, guardians or relatives of the child (or one of them is) or the prospective adopter is a step-parent of the child where any prescribed conditions are met.
363. [Paragraph 12](#) substitutes a new *section 56A* into the Adoption Act 1976. New *section 56A* imposes restrictions on British residents bringing or causing someone else to bring a child habitually resident outside the British Islands into the United Kingdom with the intention of adopting the child in the United Kingdom, unless the person complies with prescribed requirements and meets prescribed conditions. It also makes it a criminal offence for a British resident to bring or cause someone else to bring a child habitually resident outside the British Islands who he has adopted within the last six months into the United Kingdom, unless he complies with prescribed requirements and meets prescribed conditions. A person would be liable on summary conviction to up to six months’ imprisonment or a fine not exceeding the statutory maximum, or both, or, in the event of the case being referred to the Crown Court, to up to twelve months’ imprisonment or an unlimited fine, or both.
364. It is intended that regulations will require the British resident to be assessed and approved as suitable to adopt by a United Kingdom adoption agency prior to bringing a child into the United Kingdom. Regulations under subsection (6) may provide for any provision in Part II of the Adoption Act 1976 to apply with modifications or not to apply. This reflects the provision in section 83(6). Regulations under subsection (9) may provide for the restrictions in the earlier subsections not to apply to parents, relatives, guardians or a step-parent of the child. The first set of regulations under subsection (9) will be subject to the affirmative resolution procedure.
365. [Paragraph 14](#) inserts a new *subsection (1A)* into section 58 of the Adoption Act 1976 to make clear that the restrictions on advertising in that section include publishing an advertisement by electronic means, such as the Internet. Sub-paragraph 14(b) provides for the penalty on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both. [Paragraph 15](#) amends section 52 of the Adoption (Scotland) Act 1978 to make similar provision in respect of Scotland. The amendments to section 58 of the Adoption Act 1976 and section 52 of the Adoption (Scotland) Act 1978 both increase the level of fine that can be imposed as a penalty and introduce the option of imprisonment as a penalty. [Paragraph 16](#) provides a power to make regulations specifying that references to adoption agencies in those sections include prescribed persons outside the United Kingdom if it is clear that they exercise functions which correspond to those of an adoption agency.

*These notes refer to the Adoption and Children Act 2002 (c.38)
which received Royal Assent on 7th November 2002*

ANNEX B:

Stage	Date	Hansard Reference
House of Commons		
Introduction	19 th October 2001	Vol 372 Col 1360
Second Reading	29 th October 2001	Vol 373 Cols 649-726
Committee	6 th November 2001 – 17 th January	Special Standing Committee
Report and Third Reading	20 th March 2002 16 th May 2002 20 th May 2002	Vol 382 Cols 374-408 Vol 385 Cols 938-1025 Vol 386 Cols 22-125
House of Lords		
Introduction	21 st May 2002	Vol 635 Col 641
Second Reading	10 th June 2002	Vol 636 Cols 20-33 and 46-115
Committee	24 th June 2002 27 th June 2002 2 nd July 2002 4 th July 2002 11 th July 2002 15 th July 2002 18 th July 2002	Vols 636-367 Cols CWH1-390
Report	14 th October 2002 16 th October 2002 23 rd October 2002	Vol 639 Cols 597-672 Vol 639 Cols 860-950 Vol 639 Cols 1332-1401 and 1417-1426
Third Reading	31 st October 2002	Vol 640 Cols 199-251
Further Consideration		
Commons Consideration of Lords Amendments	4 th November 2002	Vol 392 Cols 24-115
Lords Consideration of Commons Amendments	5 th November 2002	Vol 640 Cols 567-634
Royal Assent		
House of Lords	7 th November 2002	Vol 640 Col 963
House of Commons	7 th November 2002	Vol 392 Col 480