

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

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;
 - 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;

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

- 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

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

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.