

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Adoption

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 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 scale¹. *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 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

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.

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)*).

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

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.