

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Adoption

Chapter 3 - Placement for Adoption and Adoption Orders

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.

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

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.