

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Adoption

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.
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)*).

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

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.