



# Adoption and Children Act 2002

## 2002 CHAPTER 38

### PART 1

#### ADOPTION

### CHAPTER 2

#### THE ADOPTION SERVICE

##### *The Adoption Service*

## 2 Basic definitions

- (1) The services maintained by local authorities under section 3(1) may be collectively referred to as “the Adoption Service”, and a local authority or registered adoption society may be referred to as an adoption agency.
- (2) In this Act, “registered adoption society” means a voluntary organisation which is an adoption society registered under Part 2 of the Care Standards Act 2000 (c. 14); but in relation to the provision of any facility of the Adoption Service, references to a registered adoption society or to an adoption agency do not include an adoption society which is not registered in respect of that facility.
- (3) A registered adoption society is to be treated as registered in respect of any facility of the Adoption Service unless it is a condition of its registration that it does not provide that facility.
- (4) No application for registration under Part 2 of the Care Standards Act 2000 may be made in respect of an adoption society which is an unincorporated body.
- (5) In this Act—
  - “the 1989 Act” means the Children Act 1989 (c. 41),
  - “adoption society” means a body whose functions consist of or include making arrangements for the adoption of children,

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“voluntary organisation” means a body other than a public or local authority the activities of which are not carried on for profit.

- (6) In this Act, “adoption support services” means—
- (a) counselling, advice and information, and
  - (b) any other services prescribed by regulations,
- in relation to adoption.
- (7) The power to make regulations under subsection (6)(b) is to be exercised so as to secure that local authorities provide financial support.
- (8) In this Chapter, references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.

#### Commencement Information

- I1** S. 2(6)(7)(8) in force at 10.3.2003 for specified purposes for E. by S.I. 2003/366, art. 2(2)(b)
- I2** S. 2(6)(7)(8) in force at 6.10.2003 for E. in so far as not already in force by S.I. 2003/366, art. 2(6)(b)
- I3** S. 2(6) in force at 7.2.2004 for W. by S.I. 2004/252, art. 2(a)
- I4** S. 2(7)(8) in force at 28.11.2003 for specified purposes for W. by S.I. 2003/3079, art. 2(1)(a)

VALID FROM 07/12/2004

### 3 Maintenance of Adoption Service

- (1) Each local authority must continue to maintain within their area a service designed to meet the needs, in relation to adoption, of—
- (a) children who may be adopted, their parents and guardians,
  - (b) persons wishing to adopt a child, and
  - (c) adopted persons, their parents, natural parents and former guardians;
- and for that purpose must provide the requisite facilities.
- (2) Those facilities must include making, and participating in, arrangements—
- (a) for the adoption of children, and
  - (b) for the provision of adoption support services.
- (3) As part of the service, the arrangements made for the purposes of subsection (2)(b)—
- (a) must extend to the provision of adoption support services to persons who are within a description prescribed by regulations,
  - (b) may extend to the provision of those services to other persons.
- (4) A local authority may provide any of the requisite facilities by securing their provision by—
- (a) registered adoption societies, or
  - (b) other persons who are within a description prescribed by regulations of persons who may provide the facilities in question.
- (5) The facilities of the service must be provided in conjunction with the local authority’s other social services and with registered adoption societies in their area, so that help

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may be given in a co-ordinated manner without duplication, omission or avoidable delay.

- (6) The social services referred to in subsection (5) are the functions of a local authority which are social services functions within the meaning of the Local Authority Social Services Act 1970 (c. 42) (which include, in particular, those functions in so far as they relate to children).

#### **4 Assessments etc. for adoption support services**

- (1) A local authority must at the request of—
- (a) any of the persons mentioned in paragraphs (a) to (c) of section 3(1), or
  - (b) any other person who falls within a description prescribed by regulations (subject to subsection (7)(a)),
- carry out an assessment of that person's needs for adoption support services.
- (2) A local authority may, at the request of any person, carry out an assessment of that person's needs for adoption support services.
- (3) A local authority may request the help of the persons mentioned in paragraph (a) or (b) of section 3(4) in carrying out an assessment.
- (4) Where, as a result of an assessment, a local authority decide that a person has needs for adoption support services, they must then decide whether to provide any such services to that person.
- (5) If—
- (a) a local authority decide to provide any adoption support services to a person, and
  - (b) the circumstances fall within a description prescribed by regulations,
- the local authority must prepare a plan in accordance with which adoption support services are to be provided to the person and keep the plan under review.
- (6) Regulations may make provision about assessments, preparing and reviewing plans, the provision of adoption support services in accordance with plans and reviewing the provision of adoption support services.
- (7) The regulations may in particular make provision—
- (a) as to the circumstances in which a person mentioned in paragraph (b) of subsection (1) is to have a right to request an assessment of his needs in accordance with that subsection,
  - (b) about the type of assessment which, or the way in which an assessment, is to be carried out,
  - (c) about the way in which a plan is to be prepared,
  - (d) about the way in which, and time at which, a plan or the provision of adoption support services is to be reviewed,
  - (e) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan,
  - (f) as to the circumstances in which a local authority may provide adoption support services subject to conditions,

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- (g) as to the consequences of conditions imposed by virtue of paragraph (f) not being met (including the recovery of any financial support provided by a local authority),
  - (h) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority's area,
  - (i) as to the circumstances in which a local authority may recover from another local authority the expenses of providing adoption support services to any person.
- (8) A local authority may carry out an assessment of the needs of any person under this section at the same time as an assessment of his needs is made under any other enactment.
- (9) If at any time during the assessment of the needs of any person under this section, it appears to a local authority that—
- (a) there may be a need for the provision of services to that person by a Primary Care Trust (in Wales, a Health Authority or Local Health Board), or
  - (b) there may be a need for the provision to him of any services which fall within the functions of a local education authority (within the meaning of the Education Act 1996 (c. 56)),
- the local authority must notify that Primary Care Trust, Health Authority, Local Health Board or local education authority.
- (10) Where it appears to a local authority that another local authority could, by taking any specified action, help in the exercise of any of their functions under this section, they may request the help of that other local authority, specifying the action in question.
- (11) A local authority whose help is so requested must comply with the request if it is consistent with the exercise of their functions.

#### Commencement Information

- I5** S. 4(1)(b)(5) in force at 7.2.2004 for specified purposes for W. by S.I. 2004/252, **art. 2(c)**
- I6** S. 4(6)(7)(b)-(i) in force at 10.3.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(2)(b)**
- I7** S. 4(6)(7)(b)-(i) in force at 6.10.2003 for E. in so far as not already in force by S.I. 2003/366, **art. 2(6)(b)**
- I8** S. 4(6)(7) in force at 7.2.2004 for W. by S.I. 2004/252, **art. 2(b)**

PROSPECTIVE

#### **F15** Local authority plans for adoption services

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#### Textual Amendments

- F1** S. 5 repealed (1.3.2005 for E., 1.4.2006 for W.) by Children Act 2004 (c. 31), **Sch. 5 Pt. 1**; S.I. 2005/394, **art. 2(1)(l)**; S.I. 2006/885, **art. 2(h)**

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VALID FROM 30/12/2005

## 6 Arrangements on cancellation of registration

Where, by virtue of the cancellation of its registration under Part 2 of the Care Standards Act 2000 (c. 14), a body has ceased to be a registered adoption society, the appropriate Minister may direct the body to make such arrangements as to the transfer of its functions relating to children and other transitional matters as seem to him expedient.

VALID FROM 30/12/2005

## 7 Inactive or defunct adoption societies etc.

- (1) This section applies where it appears to the appropriate Minister that—
  - (a) a body which is or has been a registered adoption society is inactive or defunct, or
  - (b) a body which has ceased to be a registered adoption society by virtue of the cancellation of its registration under Part 2 of the Care Standards Act 2000 has not made such arrangements for the transfer of its functions relating to children as are specified in a direction given by him.
- (2) The appropriate Minister may, in relation to such functions of the society as relate to children, direct what appears to him to be the appropriate local authority to take any such action as might have been taken by the society or by the society jointly with the authority.
- (3) A local authority are entitled to take any action which—
  - (a) apart from this subsection the authority would not be entitled to take, or would not be entitled to take without joining the society in the action, but
  - (b) they are directed to take under subsection (2).
- (4) The appropriate Minister may charge the society for expenses necessarily incurred by him or on his behalf in securing the transfer of its functions relating to children.
- (5) Before giving a direction under subsection (2) the appropriate Minister must, if practicable, consult both the society and the authority.

VALID FROM 30/12/2005

## 8 Adoption support agencies

- (1) In this Act, “adoption support agency” means an undertaking the purpose of which, or one of the purposes of which, is the provision of adoption support services; but an undertaking is not an adoption support agency—
  - (a) merely because it provides information in connection with adoption other than for the purpose mentioned in section 98(1), or
  - (b) if it is excepted by virtue of subsection (2).

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“Undertaking” has the same meaning as in the Care Standards Act 2000 (c. 14).

(2) The following are excepted—

- (a) a registered adoption society, whether or not the society is registered in respect of the provision of adoption support services,
- (b) a local authority,
- (c) a local education authority (within the meaning of the Education Act 1996 (c. 56)),
- (d) a Special Health Authority, Primary Care Trust (in Wales, a Health Authority or Local Health Board) [<sup>F2</sup>, NHS trust or NHS foundation trust],
- (e) the Registrar General,
- (f) any person, or description of persons, excepted by regulations.

(3) In section 4 of the Care Standards Act 2000 (basic definitions)—

(a) after subsection (7) there is inserted—

“(7A) “Adoption support agency” has the meaning given by section 8 of the Adoption and Children Act 2002.”,

(b) in subsection (9)(a) (construction of references to descriptions of agencies), for “or a voluntary adoption agency” there is substituted “ a voluntary adoption agency or an adoption support agency ”.

#### Textual Amendments

- F2** Words in s. 8(2)(d) substituted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 4 para. 126](#); S.I. 2004/759, art. 2

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