



Adoption and Children Act 2002

2002 CHAPTER 38

PART 1

ADOPTION

CHAPTER 3

PLACEMENT FOR ADOPTION AND ADOPTION ORDERS

Preliminaries to adoption

42 Child to live with adopters before application

- (1) An application for an adoption order may not be made unless—
 - (a) if subsection (2) applies, the condition in that subsection is met,
 - (b) if that subsection does not apply, the condition in whichever is applicable of subsections (3) to (5) applies.
- (2) If—
 - (a) the child was placed for adoption with the applicant or applicants by an adoption agency or in pursuance of an order of the High Court, or
 - (b) the applicant is a parent of the child,the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them at all times during the period of ten weeks preceding the application.
- (3) If the applicant or one of the applicants is the partner of a parent of the child, the condition is that the child must have had his home with the applicant or, as the case may be, applicants at all times during the period of six months preceding the application.
- (4) If the applicants are local authority foster parents, the condition is that the child must have had his home with the applicants at all times during the period of one year preceding the application.

Changes to legislation: Adoption and Children Act 2002, Cross Heading: Preliminaries to adoption is up to date with all changes known to be in force on or before 26 July 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (5) In any other case, the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them for not less than three years (whether continuous or not) during the period of five years preceding the application.
- (6) But subsections (4) and (5) do not prevent an application being made if the court gives leave to make it.
- (7) An adoption order may not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a couple, both of them together in the home environment have been given—
- (a) where the child was placed for adoption with the applicant or applicants by an adoption agency, to that agency,
 - (b) in any other case, to the local authority within whose area the home is.
- (8) In this section and sections 43 and 44(1)—
- (a) references to an adoption agency include a Scottish or Northern Irish adoption agency,
 - (b) references to a child placed for adoption by an adoption agency are to be read accordingly.

Modifications etc. (not altering text)

- C1** S. 42 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 6, 9(1)
- C2** S. 42 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 6, 9(2)
- C3** S. 42 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 52, 56
- C4** S. 42(7) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 11(1)(i), 52, 55

Commencement Information

- I1** S. 42 in force at 30.12.2005 by [S.I. 2005/2213](#), art. 2(c) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

43 Reports where child placed by agency

Where an application for an adoption order relates to a child placed for adoption by an adoption agency, the agency must—

- (a) submit to the court a report on the suitability of the applicants and on any other matters relevant to the operation of section 1, and
- (b) assist the court in any manner the court directs.

Modifications etc. (not altering text)

- C5** S. 43 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 11(1)(j), 52, 55

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Commencement Information

- I2** S. 43 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

44 Notice of intention to adopt

- (1) This section applies where persons (referred to in this section as “proposed adopters”) wish to adopt a child who is not placed for adoption with them by an adoption agency.
- (2) An adoption order may not be made in respect of the child unless the proposed adopters have given notice to the appropriate local authority of their intention to apply for the adoption order (referred to in this Act as a “notice of intention to adopt”).
- (3) The notice must be given not more than two years, or less than three months, before the date on which the application for the adoption order is made.
- (4) Where—
 - (a) if a person were seeking to apply for an adoption order, subsection (4) or (5) of section 42 would apply, but
 - (b) the condition in the subsection in question is not met,
 the person may not give notice of intention to adopt unless he has the court’s leave to apply for an adoption order.
- (5) On receipt of a notice of intention to adopt, the local authority must arrange for the investigation of the matter and submit to the court a report of the investigation.
- (6) In particular, the investigation must, so far as practicable, include the suitability of the proposed adopters and any other matters relevant to the operation of section 1 in relation to the application.
- (7) If a local authority receive a notice of intention to adopt in respect of a child whom they know was (immediately before the notice was given) looked after by another local authority, they must, not more than seven days after the receipt of the notice, inform the other local authority in writing that they have received the notice.
- (8) Where—
 - (a) a local authority have placed a child with any persons otherwise than as prospective adopters, and
 - (b) the persons give notice of intention to adopt,
 the authority are not to be treated as leaving the child with them as prospective adopters for the purposes of section 18(1)(b).
- (9) In this section, references to the appropriate local authority, in relation to any proposed adopters, are—
 - (a) in prescribed cases, references to the prescribed local authority,
 - (b) in any other case, references to the local authority for the area in which, at the time of giving the notice of intention to adopt, they have their home,
 and “prescribed” means prescribed by regulations.

***Changes to legislation:** Adoption and Children Act 2002, Cross Heading: Preliminaries to adoption is up to date with all changes known to be in force on or before 26 July 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Modifications etc. (not altering text)

- C6** S. 44 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **52**, 57
- C7** S. 44(2) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(k)**, 52, 55

Commencement Information

- I3** S. 44 in force at 7.12.2004 for specified purposes by [S.I. 2004/3203](#), **art. 2(1)(m)(iv)**
- I4** S. 44 in force at 30.12.2005 in so far as not already in force by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

45 Suitability of adopters

- (1) Regulations under section 9 may make provision as to the matters to be taken into account by an adoption agency in determining, or making any report in respect of, the suitability of any persons to adopt a child.
- (2) In particular, the regulations may make provision for the purpose of securing that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship.

Commencement Information

- I5** S. 45 in force at 7.12.2004 by [S.I. 2004/3203](#), **art. 2(1)(g)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4A inserted by [2014 c. 6 s. 5](#)
- s. 141(7) inserted by [2010 c. 26 Sch. 3 para. 13](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 3 Pt. 2 repealed (4.9.2013) without ever being in force by [2013 c. 22, s. 17\(4\)](#) ; [S.I. 2013/2200 art. 2\(a\)](#))