Adoption and Children Act 2002

2002 CHAPTER 38

PART 1

ADOPTION

CHAPTER 3

PLACEMENT FOR ADOPTION AND ADOPTION ORDERS

The making of adoption orders

46   Adoption orders

(1) An adoption order is an order made by the court on an application under section 50 or 51 giving parental responsibility for a child to the adopters or adopter.

(2) The making of an adoption order operates to extinguish—

   (a)   the parental responsibility which any person other than the adopters or adopter has for the adopted child immediately before the making of the order,

   (b)   any order under the 1989 Act or the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),

   (c)   any order under the Children (Scotland) Act 1995 (c. 36) other than an excepted order, and

   (d)   any duty arising by virtue of an agreement or an order of a court to make payments, so far as the payments are in respect of the adopted child's maintenance or upbringing for any period after the making of the adoption order.

   "Excepted order" means an order under section 9, 11(1)(d) or 13 of the Children (Scotland) Act 1995 or an exclusion order within the meaning of section 76(1) of that Act.

(3) An adoption order—

2

Adoption and Children Act 2002 (c. 38)
Part 1 – Adoption
Chapter 3 – Placement for adoption and adoption orders
Document Generated: 2024-03-31

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    (a)   does not affect parental responsibility so far as it relates to any period before the making of the order, and

    (b)   in the case of an order made on an application under section 51(2) by the partner of a parent of the adopted child, does not affect the parental responsibility of that parent or any duties of that parent within subsection (2) (d).

(4) Subsection (2)(d) does not apply to a duty arising by virtue of an agreement—

    (a)   which constitutes a trust, or

    (b)   which expressly provides that the duty is not to be extinguished by the making of an adoption order.

(5) An adoption order may be made even if the child to be adopted is already an adopted child.

(6) Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.

47   Conditions for making adoption orders

(1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met; but this section is subject to section 52 (parental etc. consent).

(2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied—

    (a)   that the parent or guardian consents to the making of the adoption order,

    (b)   that the parent or guardian has consented under section 20 (and has not withdrawn the consent) and does not oppose the making of the adoption order, or

    (c)   that the parent's or guardian's consent should be dispensed with.

(3) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court's leave.

(4) The second condition is that—

    (a)   the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made,

    (b)   either—

        (i) the child was placed for adoption with the consent of each parent or guardian and the consent of the mother was given when the child was at least six weeks old, or

        (ii) the child was placed for adoption under a placement order, and

    (c)   no parent or guardian opposes the making of the adoption order.

(5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court's leave.

(6) The third condition is that the child is free for adoption by virtue of an order made—

    (a)   in Scotland, under section 18 of the Adoption (Scotland) Act 1978 (c. 28), or

Adoption and Children Act 2002 (c. 38)
Part 1 – Adoption
Chapter 3 – Placement for adoption and adoption orders
Document Generated: 2024-03-31

3

    (b)   in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).

(7) The court cannot give leave under subsection (3) or (5) unless satisfied that there has been a change in circumstances since the consent of the parent or guardian was given or, as the case may be, the placement order was made.

(8) An adoption order may not be made in relation to a person who is or has been married.

(9) An adoption order may not be made in relation to a person who has attained the age of 19 years.

48 Restrictions on making adoption orders

(1) The court may not hear an application for an adoption order in relation to a child, where a previous application to which subsection (2) applies made in relation to the child by the same persons was refused by any court, unless it appears to the court that, because of a change in circumstances or for any other reason, it is proper to hear the application.

(2) This subsection applies to any application—
    (a)   for an adoption order or a Scottish or Northern Irish adoption order, or
    (b)   for an order for adoption made in the Isle of Man or any of the Channel Islands.

49 Applications for adoption

(1) An application for an adoption order may be made by—
    (a)   a couple, or
    (b)   one person,
but only if it is made under section 50 or 51 and one of the following conditions is met.

(2) The first condition is that at least one of the couple (in the case of an application under section 50) or the applicant (in the case of an application under section 51) is domiciled in a part of the British Islands.

(3) The second condition is that both of the couple (in the case of an application under section 50) or the applicant (in the case of an application under section 51) have been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of the application.

(4) An application for an adoption order may only be made if the person to be adopted has not attained the age of 18 years on the date of the application.

(5) References in this Act to a child, in connection with any proceedings (whether or not concluded) for adoption, (such as "child to be adopted" or "adopted child") include a person who has attained the age of 18 years before the proceedings are concluded.

50 Adoption by couple

(1) An adoption order may be made on the application of a couple where both of them have attained the age of 21 years.

(2) An adoption order may be made on the application of a couple where—

4

Adoption and Children Act 2002 (c. 38)
Part 1 – Adoption
Chapter 3 – Placement for adoption and adoption orders
Document Generated: 2024-03-31

    (a)   one of the couple is the mother or the father of the person to be adopted and has attained the age of 18 years, and

    (b)   the other has attained the age of 21 years.

51   Adoption by one person

(1) An adoption order may be made on the application of one person who has attained the age of 21 years and is not married.

(2) An adoption order may be made on the application of one person who has attained the age of 21 years if the court is satisfied that the person is the partner of a parent of the person to be adopted.

(3) An adoption order may be made on the application of one person who has attained the age of 21 years and is married if the court is satisfied that—

    (a)   the person's spouse cannot be found,

    (b)   the spouses have separated and are living apart, and the separation is likely to be permanent, or

    (c)   the person's spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.

(4) An adoption order may not be made on an application under this section by the mother or the father of the person to be adopted unless the court is satisfied that—

    (a)   the other natural parent is dead or cannot be found,

    (b)   by virtue of section 28 of the Human Fertilisation and Embryology Act 1990 (c. 37), there is no other parent, or

    (c)   there is some other reason justifying the child's being adopted by the applicant alone,

and, where the court makes an adoption order on such an application, the court must record that it is satisfied as to the fact mentioned in paragraph (a) or (b) or, in the case of paragraph (c), record the reason.