



# Adoption and Children Act 2002

## 2002 CHAPTER 38

### PART 1

#### ADOPTION

### CHAPTER 7

#### MISCELLANEOUS

##### *Restrictions*

## 92 Restriction on arranging adoptions etc.

- (1) A person who is neither an adoption agency nor acting in pursuance of an order of the High Court must not take any of the steps mentioned in subsection (2).
- (2) The steps are—
  - (a) asking a person other than an adoption agency to provide a child for adoption,
  - (b) asking a person other than an adoption agency to provide prospective adopters for a child,
  - (c) offering to find a child for adoption,
  - (d) offering a child for adoption to a person other than an adoption agency,
  - (e) handing over a child to any person other than an adoption agency with a view to the child's adoption by that or another person,
  - (f) receiving a child handed over to him in contravention of paragraph (e),
  - (g) entering into an agreement with any person for the adoption of a child, or for the purpose of facilitating the adoption of a child, where no adoption agency is acting on behalf of the child in the adoption,
  - (h) initiating or taking part in negotiations of which the purpose is the conclusion of an agreement within paragraph (g),

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- (i) causing another person to take any of the steps mentioned in paragraphs (a) to (h).
- (3) Subsection (1) does not apply to a person taking any of the steps mentioned in paragraphs (d), (e), (g), (h) and (i) of subsection (2) if the following condition is met.
- (4) The condition is that—
  - (a) the prospective adopters are parents, relatives or guardians of the child (or one of them is), or
  - (b) the prospective adopter is the partner of a parent of the child.
- (5) References to an adoption agency in subsection (2) include a prescribed person outside the United Kingdom exercising functions corresponding to those of an adoption agency, if the functions are being exercised in prescribed circumstances in respect of the child in question.
- (6) The Secretary of State may, after consultation with the Assembly, by order make any amendments of subsections (1) to (4), and any consequential amendments of this Act, which he considers necessary or expedient.
- (7) In this section—
  - (a) “agreement” includes an arrangement (whether or not enforceable),
  - (b) “prescribed” means prescribed by regulations made by the Secretary of State after consultation with the Assembly.

#### Commencement Information

**II** S. 92 in force at 7.12.2004 for specified purposes by S.I. 2004/3203, art. 2(1)(m)(viii)

VALID FROM 30/12/2005

#### 93 Offence of breaching restrictions under section 92

- (1) If a person contravenes section 92(1), he is guilty of an offence; and, if that person is an adoption society, the person who manages the society is also guilty of the offence.
- (2) A person is not guilty of an offence under subsection (1) of taking the step mentioned in paragraph (f) of section 92(2) unless it is proved that he knew or had reason to suspect that the child was handed over to him in contravention of paragraph (e) of that subsection.
- (3) A person is not guilty of an offence under subsection (1) of causing a person to take any of the steps mentioned in paragraphs (a) to (h) of section 92(2) unless it is proved that he knew or had reason to suspect that the step taken would contravene the paragraph in question.
- (4) But subsections (2) and (3) only apply if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.
- (5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £10,000, or both.

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## 94 Restriction on reports

- (1) 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.

“Prescribed” means prescribed by regulations made by the Secretary of State after consultation with the Assembly.

- (2) If a person—
- (a) contravenes subsection (1), or
  - (b) causes a person to prepare a report, or submits to any person a report which has been prepared, in contravention of that subsection,
- he is guilty of an offence.
- (3) If a person who works for an adoption society—
- (a) contravenes subsection (1), or
  - (b) causes a person to prepare a report, or submits to any person a report which has been prepared, in contravention of that subsection,
- the person who manages the society is also guilty of the offence.
- (4) A person is not guilty of an offence under subsection (2)(b) unless it is proved that he knew or had reason to suspect that the report would be, or had been, prepared in contravention of subsection (1).

But this subsection only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

- (5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

### Commencement Information

**I2** S. 94(1) in force at 7.12.2004 for specified purposes by S.I. 2004/3203, art. 2(1)(m)(ix)

VALID FROM 30/12/2005

## 95 Prohibition of certain payments

- (1) This section applies to any payment (other than an excepted payment) which is made for or in consideration of—
- (a) the adoption of a child,
  - (b) giving any consent required in connection with the adoption of a child,
  - (c) removing from the United Kingdom 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,
  - (d) a person (who is neither an adoption agency nor acting in pursuance of an order of the High Court) taking any step mentioned in section 92(2),

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- (e) preparing, causing to be prepared or submitting a report the preparation of which contravenes section 94(1).
- (2) In this section and section 96, removing a child from the United Kingdom has the same meaning as in section 85.
- (3) Any person who—
  - (a) makes any payment to which this section applies,
  - (b) agrees or offers to make any such payment, or
  - (c) receives or agrees to receive or attempts to obtain any such payment,
 is guilty of an offence.
- (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £10,000, or both.

VALID FROM 30/12/2005

## 96 Excepted payments

- (1) A payment is an excepted payment if it is made by virtue of, or in accordance with provision made by or under, this Act, the Adoption (Scotland) Act 1978 (c. 28) or the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).
- (2) A payment is an excepted payment if it is made to a registered adoption society by—
  - (a) a parent or guardian of a child, or
  - (b) a person who adopts or proposes to adopt a child,
 in respect of expenses reasonably incurred by the society in connection with the adoption or proposed adoption of the child.
- (3) A payment is an excepted payment if it is made in respect of any legal or medical expenses incurred or to be incurred by any person in connection with an application to a court which he has made or proposes to make for an adoption order, a placement order, or an order under section 26 or 84.
- (4) A payment made as mentioned in section 95(1)(c) is an excepted payment if—
  - (a) the condition in section 85(2) is met, and
  - (b) the payment is made in respect of the travel and accommodation expenses reasonably incurred in removing the child from the United Kingdom for the purpose of adoption.

VALID FROM 30/12/2005

## 97 Sections 92 to 96: interpretation

In sections 92 to 96—

- (a) “adoption agency” includes a Scottish or Northern Irish adoption agency,
- (b) “payment” includes reward,

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- (c) 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.

### Information

## 98 Pre-commencement adoptions: information

- (1) Regulations under section 9 may make provision for the purpose of—
- (a) assisting persons adopted before the appointed day who have attained the age of 18 to obtain information in relation to their adoption, and
  - (b) facilitating contact between such persons and their relatives.
- (2) For that purpose the regulations may confer functions on—
- (a) registered adoption support agencies,
  - (b) the Registrar General,
  - (c) adoption agencies.
- (3) For that purpose the regulations may—
- (a) authorise or require any person mentioned in subsection (2) to disclose information,
  - (b) authorise or require the disclosure of information contained in records kept under section 8 of the Public Records Act 1958 (c. 51) (court records),
- and may impose conditions on the disclosure of information, including conditions restricting its further disclosure.
- (4) The regulations may authorise the charging of prescribed fees by any person mentioned in subsection (2) or in respect of the disclosure of information under subsection (3)(b).
- (5) An authorisation or requirement to disclose information by virtue of subsection (3)(a) has effect in spite of any restriction on the disclosure of information in Chapter 5.
- (6) The making of regulations by virtue of subsections (2) to (4) which relate to the Registrar General requires the approval of the Chancellor of the Exchequer.
- (7) In this section—
- “appointed day” means the day appointed for the commencement of sections 56 to 65,
  - “registered adoption support agency” means an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000 (c. 14),
  - “relative”, in relation to an adopted person, means any person who (but for his adoption) would be related to him by blood (including half-blood) or marriage.

#### Commencement Information

**I3** S. 98 in force at 7.2.2004 for W. by S.I. 2004/252, art. 2(b)

**I4** S. 98 in force at 7.12.2004 for E. by S.I. 2004/3203, art. 2(1)(j)

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## *Proceedings*

### **99 Proceedings for offences**

Proceedings for an offence by virtue of section 9 or 59 may not, without the written consent of the Attorney General, be taken by any person other than [<sup>F1</sup>the Commission for Social Care Inspection] or the Assembly.

#### **Textual Amendments**

- F1** Words in s. 99 substituted (1.4.2004 for E.) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), s. 199\(1\)\(4\), Sch. 9 para. 32; S.I. 2004/759, art. 4\(2\)\(b\)](#)

### **100 Appeals**

In section 94 of the 1989 Act (appeals under that Act), in subsections (1)(a) and (2), after “this Act” there is inserted “ or the Adoption and Children Act 2002 ”.

### **101 Privacy**

- (1) Proceedings under this Act in the High Court or a County Court may be heard and determined in private.
- (2) In section 12 of the Administration of Justice Act 1960 (c. 65) (publication of information relating to proceedings in private), in subsection (1)(a)(ii), after “1989” there is inserted “ or the Adoption and Children Act 2002 ”.
- (3) In section 97 of the 1989 Act (privacy for children involved in certain proceedings), after “this Act” in subsections (1) and (2) there is inserted “ or the Adoption and Children Act 2002 ”.

VALID FROM 30/12/2005

## *The Children and Family Court Advisory and Support Service*

### **102 Officers of the Service**

- (1) For the purposes of—
  - (a) any relevant application,
  - (b) the signification by any person of any consent to placement or adoption,
 rules must provide for the appointment in prescribed cases of an officer of the Children and Family Court Advisory and Support Service (“the Service”) [<sup>F2</sup>or a Welsh family proceedings officer].
- (2) The rules may provide for the appointment of such an officer in other circumstances in which it appears to the Lord Chancellor to be necessary or expedient to do so.

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- (3) The rules may provide for the officer—
- (a) to act on behalf of the child upon the hearing of any relevant application, with the duty of safeguarding the interests of the child in the prescribed manner,
  - (b) where the court so requests, to prepare a report on matters relating to the welfare of the child in question,
  - (c) to witness documents which signify consent to placement or adoption,
  - (d) to perform prescribed functions.
- (4) A report prepared in pursuance of the rules on matters relating to the welfare of a child must—
- (a) deal with prescribed matters (unless the court orders otherwise), and
  - (b) be made in the manner required by the court.
- (5) A person who—
- (a) in the case of an application for the making, varying or revocation of a placement order, is employed by the local authority which made the application,
  - (b) in the case of an application for an adoption order in respect of a child who was placed for adoption, is employed by the adoption agency which placed him, or
  - (c) is within a prescribed description,
- is not to be appointed under subsection (1) or (2).
- (6) In this section, “relevant application” means an application for—
- (a) the making, varying or revocation of a placement order,
  - (b) the making of an order under section 26, or the varying or revocation of such an order,
  - (c) the making of an adoption order, or
  - (d) the making of an order under section 84.
- (7) Rules may make provision as to the assistance which the court may require an officer of the Service [<sup>F3</sup>or a Welsh family proceedings officer] to give to it.
- [<sup>F4</sup>(8) In this section and section 103 “Welsh family proceedings officer” has the meaning given by section 35 of the Children Act 2004.]

#### Textual Amendments

- F2** Words in s. 102(1) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), Sch. 3 para. 16(1)(2); S.I. 2005/700, art. 2(2)
- F3** Words in s. 102(7) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), Sch. 3 para. 16(1)(3); S.I. 2005/700, art. 2(2)
- F4** S. 102(8) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), Sch. 3 para. 16(1)(4); S.I. 2005/700, art. 2(2)

### 103 Right of officers of the Service to have access to adoption agency records

- (1) Where an officer of the Service [<sup>F5</sup>or a Welsh family proceedings officer] has been appointed to act under section 102(1), he has the right at all reasonable times to examine and take copies of any records of, or held by, an adoption agency which

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were compiled in connection with the making, or proposed making, by any person of any application under this Part in respect of the child concerned.

- (2) Where an officer of the Service [<sup>F6</sup>or a Welsh family proceedings officer] takes a copy of any record which he is entitled to examine under this section, that copy or any part of it is admissible as evidence of any matter referred to in any—
- (a) report which he makes to the court in the proceedings in question, or
  - (b) evidence which he gives in those proceedings.
- (3) Subsection (2) has effect regardless of any enactment or rule of law which would otherwise prevent the record in question being admissible in evidence.

#### Textual Amendments

- F5** Words in s. 103(1) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), Sch. 3 para. 17; S.I. 2005/700, art. 2(2)
- F6** Words in s. 103(2) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), Sch. 3 para. 17; S.I. 2005/700, art. 2(2)

VALID FROM 30/12/2005

### *Evidence*

#### **104 Evidence of consent**

- (1) If a document signifying any consent which is required by this Part to be given is witnessed in accordance with rules, it is to be admissible in evidence without further proof of the signature of the person by whom it was executed.
- (2) A document signifying any such consent which purports to be witnessed in accordance with rules is to be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

### *Scotland, Northern Ireland and the Islands*

VALID FROM 30/12/2005

#### **105 Effect of certain Scottish orders and provisions**

- (1) A Scottish adoption order or an order under section 25 of the Adoption (Scotland) Act 1978 (c. 28) (interim adoption orders) has effect in England and Wales as it has in Scotland, but as if references to the parental responsibilities and the parental rights in relation to a child were to parental responsibility for the child.
- (2) An order made under section 18 of the Adoption (Scotland) Act 1978 (freeing orders), and the revocation or variation of such an order under section 20 or 21 of that Act, have effect in England and Wales as they have effect in Scotland, but as if



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references to the parental responsibilities and the parental rights in relation to a child were to parental responsibility for the child.

- (3) Any person who—
- (a) contravenes section 27(1) of that Act (removal where adoption agreed etc.), or
  - (b) contravenes section 28(1) or (2) of that Act (removal where applicant provided home),
- is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (4) Orders made under section 29 of that Act (order to return or not to remove child) are to have effect in England and Wales as if they were orders of the High Court under section 41 of this Act.

VALID FROM 30/12/2005

#### **106 Effect of certain Northern Irish orders and provisions**

- (1) A Northern Irish adoption order or an order under Article 26 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)) (interim orders) has effect in England and Wales as it has in Northern Ireland.
- (2) An order made under Article 17 or 18 of the Adoption (Northern Ireland) Order 1987 (freeing orders), or the variation or revocation of such an order under Article 20 or 21 of that Order, have effect in England and Wales as they have in Northern Ireland.
- (3) Any person who—
  - (a) contravenes Article 28(1) or (2) of the Adoption (Northern Ireland) Order 1987 (removal where adoption agreed etc.), or
  - (b) contravenes Article 29(1) or (2) of that Order (removal where applicant provided home),
 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (4) Orders made under Article 30 of that Order (order to return or not to remove child) are to have effect in England and Wales as if they were orders of the High Court under section 41 of this Act.

VALID FROM 30/12/2005

#### **107 Use of adoption records from other parts of the British Islands**

- Any document which is receivable as evidence of any matter—
- (a) in Scotland under section 45(2) of the Adoption (Scotland) Act 1978 (c. 28),

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- (b) in Northern Ireland under Article 63(1) of the Adoption (Northern Ireland) Order 1987, or
- (c) in the Isle of Man or any of the Channel Islands under an enactment corresponding to section 77(3) of this Act,
- is also receivable as evidence of that matter in England and Wales.

## 108 Channel Islands and the Isle of Man

(1) Regulations may provide—

- (a) for a reference in any provision of this Act to an order of a court to include an order of a court in the Isle of Man or any of the Channel Islands which appears to the Secretary of State to correspond in its effect to the order in question,
- (b) for a reference in any provision of this Act to an adoption agency to include a person who appears to the Secretary of State to exercise functions under the law of the Isle of Man or any of the Channel Islands which correspond to those of an adoption agency and for any reference in any provision of this Act to a child placed for adoption by an adoption agency to be read accordingly,
- (c) for a reference in any provision of this Act to an enactment (including an enactment contained in this Act) to include a provision of the law of the Isle of Man or any of the Channel Islands which appears to the Secretary of State to correspond in its effect to the enactment,
- (d) for any reference in any provision of this Act to the United Kingdom to include the Isle of Man or any of the Channel Islands.

(2) Regulations may modify any provision of this Act, as it applies to any order made, or other thing done, under the law of the Isle of Man or any of the Channel Islands.

(3) In this section, “regulations” means regulations made by the Secretary of State after consultation with the Assembly.

### Commencement Information

**I5** S. 108 in force at 7.12.2004 by S.I. 2004/3203, art. 2(1)(k)

VALID FROM 30/12/2005

### General

## 109 Avoiding delay

(1) In proceedings in which a question may arise as to whether an adoption order or placement order should be made, or any other question with respect to such an order, the court must (in the light of any rules made by virtue of subsection (2))—

- (a) draw up a timetable with a view to determining such a question without delay, and
- (b) give such directions as it considers appropriate for the purpose of ensuring that the timetable is adhered to.

(2) Rules may—

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- (a) prescribe periods within which prescribed steps must be taken in relation to such proceedings, and
- (b) make other provision with respect to such proceedings for the purpose of ensuring that such questions are determined without delay.

**110 Service of notices etc.**

Any notice or information required to be given by virtue of this Act may be given by post.

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