



# Adoption and Children Act 2002

## 2002 CHAPTER 38

### PART 2

#### AMENDMENTS OF THE CHILDREN ACT 1989

#### **111 Parental responsibility of unmarried father**

- (1) Section 4 of the 1989 Act (acquisition of responsibility by the father of a child who is not married to the child's mother) is amended as follows.
- (2) In subsection (1) (cases where parental responsibility is acquired), for the words after "birth" there is substituted " , the father shall acquire parental responsibility for the child if—
  - (a) he becomes registered as the child's father under any of the enactments specified in subsection (1A);
  - (b) he and the child's mother make an agreement (a "parental responsibility agreement") providing for him to have parental responsibility for the child; or
  - (c) the court, on his application, orders that he shall have parental responsibility for the child."
- (3) After that subsection there is inserted—
  - (1A) The enactments referred to in subsection (1)(a) are—
    - (a) paragraphs (a), (b) and (c) of section 10(1) and of section 10A(1) of the Births and Deaths Registration Act 1953;
    - (b) paragraphs (a), (b)(i) and (c) of section 18(1), and sections 18(2) (b) and 20(1)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965; and
    - (c) sub-paragraphs (a), (b) and (c) of Article 14(3) of the Births and Deaths Registration (Northern Ireland) Order 1976.
  - (1B) The Lord Chancellor may by order amend subsection (1A) so as to add further enactments to the list in that subsection."

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- (4) For subsection (3) there is substituted—
- “(2A) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.
- (3) The court may make an order under subsection (2A) on the application—
- (a) of any person who has parental responsibility for the child; or
- (b) with the leave of the court, of the child himself,
- subject, in the case of parental responsibility acquired under subsection (1) (c), to section 12(4).”
- (5) Accordingly, in section 2(2) of the 1989 Act (a father of a child who is not married to the child’s mother shall not have parental responsibility for the child unless he acquires it in accordance with the provisions of the Act), for the words from “shall not” to “acquires it” there is substituted “shall have parental responsibility for the child if he has acquired it (and has not ceased to have it)”.
- (6) In section 104 of the 1989 Act (regulations and orders)—
- (a) in subsection (2), after “section” there is inserted “4(1B),”, and
- (b) in subsection (3), after “section” there is inserted “4(1B) or”.
- (7) Paragraph (a) of section 4(1) of the 1989 Act, as substituted by subsection (2) of this section, does not confer parental responsibility on a man who was registered under an enactment referred to in paragraph (a), (b) or (c) of section 4(1A) of that Act, as inserted by subsection (3) of this section, before the commencement of subsection (3) in relation to that paragraph.

## **112 Acquisition of parental responsibility by step-parent**

After section 4 of the 1989 Act there is inserted—

### **“4A Acquisition of parental responsibility by step-parent**

- (1) Where a child’s parent (“parent A”) who has parental responsibility for the child is married to a person who is not the child’s parent (“the step-parent”)—
- (a) parent A or, if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or
- (b) the court may, on the application of the step-parent, order that the step-parent shall have parental responsibility for the child.
- (2) An agreement under subsection (1)(a) is also a “parental responsibility agreement”, and section 4(2) applies in relation to such agreements as it applies in relation to parental responsibility agreements under section 4.
- (3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application—
- (a) of any person who has parental responsibility for the child; or
- (b) with the leave of the court, of the child himself.

- (4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.”

### **113 Section 8 orders: local authority foster parents**

In section 9 of the 1989 Act (restrictions on making section 8 orders)—

- (a) in subsection (3)(c), for “three years” there is substituted “one year”, and
- (b) subsection (4) is omitted.

### **114 Residence orders: extension to age of 18**

- (1) In section 12 of the 1989 Act (residence orders and parental responsibility), after subsection (4) there is inserted—

“(5) The power of a court to make a residence order in favour of any person who is not the parent or guardian of the child concerned includes power to direct, at the request of that person, that the order continue in force until the child reaches the age of eighteen (unless the order is brought to an end earlier); and any power to vary a residence order is exercisable accordingly.

- (6) Where a residence order includes such a direction, an application to vary or discharge the order may only be made, if apart from this subsection the leave of the court is not required, with such leave”.

- (2) In section 9 of that Act (restrictions on making section 8 orders), at the beginning of subsection (6) there is inserted “Subject to section 12(5)”.
- (3) In section 91 of that Act (effect and duration of orders), in subsection (10), after “9(6)” there is inserted “or 12(5)”.

### **115 Special guardianship**

- (1) After section 14 of the 1989 Act there is inserted—

*“Special guardianship*

#### **14A Special guardianship orders**

- (1) A “special guardianship order” is an order appointing one or more individuals to be a child’s “special guardian” (or special guardians).
- (2) A special guardian—
- (a) must be aged eighteen or over; and
  - (b) must not be a parent of the child in question,
- and subsections (3) to (6) are to be read in that light.
- (3) The court may make a special guardianship order with respect to any child on the application of an individual who—
- (a) is entitled to make such an application with respect to the child; or
  - (b) has obtained the leave of the court to make the application,
- or on the joint application of more than one such individual.

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- (4) Section 9(3) applies in relation to an application for leave to apply for a special guardianship order as it applies in relation to an application for leave to apply for a section 8 order.
- (5) The individuals who are entitled to apply for a special guardianship order with respect to a child are—
  - (a) any guardian of the child;
  - (b) any individual in whose favour a residence order is in force with respect to the child;
  - (c) any individual listed in subsection (5)(b) or (c) of section 10 (as read with subsection (10) of that section);
  - (d) a local authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application.
- (6) The court may also make a special guardianship order with respect to a child in any family proceedings in which a question arises with respect to the welfare of the child if—
  - (a) an application for the order has been made by an individual who falls within subsection (3)(a) or (b) (or more than one such individual jointly); or
  - (b) the court considers that a special guardianship order should be made even though no such application has been made.
- (7) No individual may make an application under subsection (3) or (6)(a) unless, before the beginning of the period of three months ending with the date of the application, he has given written notice of his intention to make the application—
  - (a) if the child in question is being looked after by a local authority, to that local authority, or
  - (b) otherwise, to the local authority in whose area the individual is ordinarily resident.
- (8) On receipt of such a notice, the local authority must investigate the matter and prepare a report for the court dealing with—
  - (a) the suitability of the applicant to be a special guardian;
  - (b) such matters (if any) as may be prescribed by the Secretary of State; and
  - (c) any other matter which the local authority consider to be relevant.
- (9) The court may itself ask a local authority to conduct such an investigation and prepare such a report, and the local authority must do so.
- (10) The local authority may make such arrangements as they see fit for any person to act on their behalf in connection with conducting an investigation or preparing a report referred to in subsection (8) or (9).
- (11) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (8).
- (12) Subsections (8) and (9) of section 10 apply in relation to special guardianship orders as they apply in relation to section 8 orders.

- (13) This section is subject to section 29(5) and (6) of the Adoption and Children Act 2002.

#### **14B Special guardianship orders: making**

- (1) Before making a special guardianship order, the court must consider whether, if the order were made—
- (a) a contact order should also be made with respect to the child, and
  - (b) any section 8 order in force with respect to the child should be varied or discharged.
- (2) On making a special guardianship order, the court may also—
- (a) give leave for the child to be known by a new surname;
  - (b) grant the leave required by section 14C(3)(b), either generally or for specified purposes.

#### **14C Special guardianship orders: effect**

- (1) The effect of a special guardianship order is that while the order remains in force—
- (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and
  - (b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).
- (2) Subsection (1) does not affect—
- (a) the operation of any enactment or rule of law which requires the consent of more than one person with parental responsibility in a matter affecting the child; or
  - (b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.
- (3) While a special guardianship order is in force with respect to a child, no person may—
- (a) cause the child to be known by a new surname; or
  - (b) remove him from the United Kingdom,
- without either the written consent of every person who has parental responsibility for the child or the leave of the court.
- (4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of his.
- (5) If the child with respect to whom a special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to—
- (a) each parent of the child with parental responsibility; and
  - (b) each guardian of the child,
- but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.

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*Status: This is the original version (as it was originally enacted).*

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(6) This section is subject to section 29(7) of the Adoption and Children Act 2002.

#### **14D Special guardianship orders: variation and discharge**

- (1) The court may vary or discharge a special guardianship order on the application of—
  - (a) the special guardian (or any of them, if there are more than one);
  - (b) any parent or guardian of the child concerned;
  - (c) any individual in whose favour a residence order is in force with respect to the child;
  - (d) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;
  - (e) the child himself; or
  - (f) a local authority designated in a care order with respect to the child.
- (2) In any family proceedings in which a question arises with respect to the welfare of a child with respect to whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under subsection (1).
- (3) The following must obtain the leave of the court before making an application under subsection (1)—
  - (a) the child;
  - (b) any parent or guardian of his;
  - (c) any step-parent of his who has acquired, and has not lost, parental responsibility for him by virtue of section 4A;
  - (d) any individual falling within subsection (1)(d) who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for him.
- (4) Where the person applying for leave to make an application under subsection (1) is the child, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application under subsection (1).
- (5) The court may not grant leave to a person falling within subsection (3)(b) (c) or (d) unless it is satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

#### **14E Special guardianship orders: supplementary**

- (1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court shall (in the light of any rules made by virtue of subsection (3))—
  - (a) draw up a timetable with a view to determining the question without delay; and
  - (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.

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- (2) Subsection (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.
- (3) The power to make rules in subsection (2) of section 11 applies for the purposes of this section as it applies for the purposes of that.
- (4) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.
- (5) Section 11(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to section 8 orders.

#### **14F Special guardianship support services**

- (1) Each local authority must make arrangements for the provision within their area of special guardianship support services, which means—
  - (a) counselling, advice and information; and
  - (b) such other services as are prescribed,in relation to special guardianship.
- (2) The power to make regulations under subsection (1)(b) is to be exercised so as to secure that local authorities provide financial support.
- (3) At the request of any of the following persons—
  - (a) a child with respect to whom a special guardianship order is in force;
  - (b) a special guardian;
  - (c) a parent;
  - (d) any other person who falls within a prescribed description,a local authority may carry out an assessment of that person's needs for special guardianship support services (but, if the Secretary of State so provides in regulations, they must do so if he is a person of a prescribed description, or if his case falls within a prescribed description, or if both he and his case fall within prescribed descriptions).
- (4) A local authority may, at the request of any other person, carry out an assessment of that person's needs for special guardianship support services.
- (5) Where, as a result of an assessment, a local authority decide that a person has needs for special guardianship support services, they must then decide whether to provide any such services to that person.
- (6) If—
  - (a) a local authority decide to provide any special guardianship support services to a person, and
  - (b) the circumstances fall within a prescribed description,the local authority must prepare a plan in accordance with which special guardianship support services are to be provided to him, and keep the plan under review.
- (7) The Secretary of State may by regulations make provision about assessments, preparing and reviewing plans, the provision of special guardianship support

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services in accordance with plans and reviewing the provision of special guardianship support services.

- (8) The regulations may in particular make provision—
- (a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;
  - (b) about the way in which a plan is to be prepared;
  - (c) about the way in which, and the time at which, a plan or the provision of special guardianship support services is to be reviewed;
  - (d) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;
  - (e) as to the circumstances in which a local authority may provide special guardianship support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);
  - (f) as to the consequences of conditions imposed by virtue of paragraph (e) not being met (including the recovery of any financial support provided);
  - (g) 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;
  - (h) as to the circumstances in which a local authority may recover from another local authority the expenses of providing special guardianship support services to any person.
- (9) A local authority may provide special guardianship support services (or any part of them) by securing their provision by—
- (a) another local authority; or
  - (b) a person within a description prescribed in regulations of persons who may provide special guardianship support services,
- and may also arrange with any such authority or person for that other authority or that person to carry out the local authority's functions in relation to assessments under this section.
- (10) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.
- (11) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority under this section as it applies in relation to the exercise of functions of a local authority under Part 3.

#### **14G Special guardianship support services: representations**

- (1) Every local authority shall establish a procedure for considering representations (including complaints) made to them by any person to whom they may provide special guardianship support services about the discharge of their functions under section 14F in relation to him.
- (2) Regulations may be made by the Secretary of State imposing time limits on the making of representations under subsection (1).



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- (3) In considering representations under subsection (1), a local authority shall comply with regulations (if any) made by the Secretary of State for the purposes of this subsection.”
- (2) The 1989 Act is amended as follows.
- (3) In section 1 (welfare of the child), in subsection (4)(b), after “discharge” there is inserted “a special guardianship order or”.
- (4) In section 5 (appointment of guardians)—
- (a) in subsection (1)—
    - (i) in paragraph (b), for “or guardian” there is substituted “, guardian or special guardian”, and
    - (ii) at the end of paragraph (b) there is inserted “; or
    - (c) paragraph (b) does not apply, and the child’s only or last surviving special guardian dies.”,
  - (b) in subsection (4), at the end there is inserted “; and a special guardian of a child may appoint another individual to be the child’s guardian in the event of his death”, and
  - (c) in subsection (7), at the end of paragraph (b) there is inserted “or he was the child’s only (or last surviving) special guardian”.

#### **116 Accommodation of children in need etc.**

- (1) In section 17 of the 1989 Act (provision of services for children in need, their families and others), in subsection (6) (services that may be provided in exercise of the functions under that section) after “include” there is inserted “providing accommodation and”.
- (2) In section 22 of that Act (general duty of local authority in relation to children looked after by them), in subsection (1) (looked after children include those provided with accommodation, with exceptions) before “23B” there is inserted “17”.
- (3) In section 24A of that Act (advice and assistance for certain children and young persons aged 16 or over), in subsection (5), for “or, in exceptional circumstances, cash” there is substituted “and, in exceptional circumstances, assistance may be given—
- (a) by providing accommodation, if in the circumstances assistance may not be given in respect of the accommodation under section 24B, or
  - (b) in cash”.

#### **117 Inquiries by local authorities into representations**

- (1) In section 24D of the 1989 Act (representations: sections 23A to 24B), after subsection (1) there is inserted—
- “(1A) Regulations may be made by the Secretary of State imposing time limits on the making of representations under subsection (1).”
- (2) Section 26 of that Act (procedure for considering other representations) is amended as follows.

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- (3) In subsection (3) (which makes provision as to the persons by whom, and the matters in respect of which, representations may be made), for “functions under this Part” there is substituted “qualifying functions”.
- (4) After that subsection there is inserted—
- “(3A) The following are qualifying functions for the purposes of subsection (3)—
- (a) functions under this Part,
- (b) such functions under Part 4 or 5 as are specified by the Secretary of State in regulations.
- (3B) The duty under subsection (3) extends to representations (including complaints) made to the authority by—
- (a) any person mentioned in section 3(1) of the Adoption and Children Act 2002 (persons for whose needs provision is made by the Adoption Service) and any other person to whom arrangements for the provision of adoption support services (within the meaning of that Act) extend,
- (b) such other person as the authority consider has sufficient interest in a child who is or may be adopted to warrant his representations being considered by them,
- about the discharge by the authority of such functions under the Adoption and Children Act 2002 as are specified by the Secretary of State in regulations.”
- (5) In subsection (4) (procedure to require involvement of independent person), after paragraph (b) there is inserted—
- “but this subsection is subject to subsection (5A).”
- (6) After that subsection there is inserted—
- “(4A) Regulations may be made by the Secretary of State imposing time limits on the making of representations under this section.”
- (7) After subsection (5) there is inserted—
- “(5A) Regulations under subsection (5) may provide that subsection (4) does not apply in relation to any consideration or discussion which takes place as part of a procedure for which provision is made by the regulations for the purpose of resolving informally the matters raised in the representations.”

## **118 Review of cases of looked after children**

- (1) In section 26 of the 1989 Act (review of cases of looked after children, etc.), in subsection (2) (regulations as to reviews)—
- (a) in paragraph (e), “to consider” is omitted and after “their care” there is inserted—
- “(i) to keep the section 31A plan for the child under review and, if they are of the opinion that some change is required, to revise the plan, or make a new plan, accordingly,
- (ii) to consider”,

- (b) in paragraph (f), “to consider” is omitted and after the second mention of “the authority” there is inserted—
  - “(i) if there is no plan for the future care of the child, to prepare one,
  - (ii) if there is such a plan for the child, to keep it under review and, if they are of the opinion that some change is required, to revise the plan or make a new plan, accordingly,
  - (iii) to consider”,
- (c) after paragraph (j) there is inserted—
  - “(k) for the authority to appoint a person in respect of each case to carry out in the prescribed manner the functions mentioned in subsection (2A) and any prescribed function”.

(2) After that subsection there is inserted—

- “(2A) The functions referred to in subsection (2)(k) are—
- (a) participating in the review of the case in question,
  - (b) monitoring the performance of the authority’s functions in respect of the review,
  - (c) referring the case to an officer of the Children and Family Court Advisory and Support Service, if the person appointed under subsection (2)(k) considers it appropriate to do so.
- (2B) A person appointed under subsection (2)(k) must be a person of a prescribed description.
- (2C) In relation to children whose cases are referred to officers under subsection (2A)(c), the Lord Chancellor may by regulations—
- (a) extend any functions of the officers in respect of family proceedings (within the meaning of section 12 of the Criminal Justice and Court Services Act 2000) to other proceedings,
  - (b) require any functions of the officers to be performed in the manner prescribed by the regulations.”

## **119 Advocacy services**

After section 26 of the 1989 Act there is inserted—

### **“26A Advocacy services**

- (1) Every local authority shall make arrangements for the provision of assistance to—
  - (a) persons who make or intend to make representations under section 24D; and
  - (b) children who make or intend to make representations under section 26.
- (2) The assistance provided under the arrangements shall include assistance by way of representation.
- (3) The arrangements—

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- (a) shall secure that a person may not provide assistance if he is a person who is prevented from doing so by regulations made by the Secretary of State; and
  - (b) shall comply with any other provision made by the regulations in relation to the arrangements.
- (4) The Secretary of State may make regulations requiring local authorities to monitor the steps that they have taken with a view to ensuring that they comply with regulations made for the purposes of subsection (3).
- (5) Every local authority shall give such publicity to their arrangements for the provision of assistance under this section as they consider appropriate.”

## **120 Meaning of “harm” in the 1989 Act**

In section 31 of the 1989 Act (care and supervision orders), at the end of the definition of “harm” in subsection (9) there is inserted “including, for example, impairment suffered from seeing or hearing the ill-treatment of another”.

## **121 Care plans**

- (1) In section 31 of the 1989 Act (care and supervision orders), after subsection (3) there is inserted—
- “(3A) No care order may be made with respect to a child until the court has considered a section 31A plan.”
- (2) After that section there is inserted—

### **“31A Care orders: care plans**

- (1) Where an application is made on which a care order might be made with respect to a child, the appropriate local authority must, within such time as the court may direct, prepare a plan (“a care plan”) for the future care of the child.
  - (2) While the application is pending, the authority must keep any care plan prepared by them under review and, if they are of the opinion some change is required, revise the plan, or make a new plan, accordingly.
  - (3) A care plan must give any prescribed information and do so in the prescribed manner.
  - (4) For the purposes of this section, the appropriate local authority, in relation to a child in respect of whom a care order might be made, is the local authority proposed to be designated in the order.
  - (5) In section 31(3A) and this section, references to a care order do not include an interim care order.
  - (6) A plan prepared, or treated as prepared, under this section is referred to in this Act as a “section 31A plan”.
- (3) If—
- (a) before subsection (2) comes into force, a care order has been made in respect of a child and a plan for the future care of the child has been prepared in

connection with the making of the order by the local authority designated in the order, and

- (b) on the day on which that subsection comes into force the order is in force, or would be in force but for section 29(1) of this Act,
- the plan is to have effect as if made under section 31A of the 1989 Act.

## **122 Interests of children in proceedings**

- (1) In section 41 of the 1989 Act (specified proceedings)—
  - (a) in subsection (6), after paragraph (h) there is inserted—
    - “(hh) on an application for the making or revocation of a placement order (within the meaning of section 21 of the Adoption and Children Act 2002);”
  - (b) after that subsection there is inserted—
    - “(6A) The proceedings which may be specified under subsection (6)
      - (i) include (for example) proceedings for the making, varying or discharging of a section 8 order.”
- (2) In section 93 of the 1989 Act (rules of court), in subsection (2), after paragraph (b) there is inserted—
  - “(bb) for children to be separately represented in relevant proceedings.”