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STATUTORY INSTRUMENTS

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**1987 No. 2203**

**The Adoption (Northern Ireland) Order 1987**

**PART III**

**ADOPTION ORDERS**

*The making of adoption orders*

**Adoption orders**

**12.**—(1) An adoption order is an order vesting the parental rights and duties relating to a child in the adopters, and such an order may be made by an authorised court on the application of the adopters.

(2) The order does not affect the parental rights and duties so far as they relate to any period before the making of the order.

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

(a) any parental right or duty relating to the child which—

(i) is vested in a person (not being one of the adopters) who was the parent or guardian of the child immediately before the making of the order, or

(ii) is vested in any other person by virtue of the order of any court; and

(b) any duty arising by virtue of an agreement or the order of a court to make payments, so far as the payments are in respect of the child's maintenance for any period after the making of the adoption order or any other matter comprised in the parental duties and relating to such a period.

(4) Paragraph (3)(b) 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 not be made in relation to a child who is or has been married.

(6) An adoption order may contain such terms and conditions as the court thinks fit.

(7) An adoption order may be made notwithstanding that the child is already an adopted child.

**Child to live with adopters before order made**

**13.**—(1) Where—

(a) the applicant, or one of the applicants, is a parent, step-parent or relative of the child, or

(b) the child was placed with the applicants by an adoption agency or in pursuance of an order of the High Court,

an adoption order shall not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the applicants or one of them.

(2) Where paragraph (1) does not apply, an adoption order shall not be made unless the child is at least 12 months old and at all times during the preceding 12 months had his home with the applicants or one of them.

(3) An adoption order shall 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 married couple, both applicants together in the home environment have been afforded—

- (a) where the child was placed with the applicant by an adoption agency, to that agency, or
- (b) in any other case, to the Board within whose area the home is.

### **Adoption by married couple**

**14.**—(1) An adoption order may be made on the application of a married couple where each has attained the age of 21 years but an adoption order shall not otherwise be made on the application of more than one person.

(2) An adoption order shall not be made on the application of a married couple unless at least one of them is domiciled in a part of the United Kingdom, or in any of the Channel Islands or in the Isle of Man.

(3) If the married couple consist of a parent and step-parent of the child, the court shall dismiss the application if it considers the matter would be better dealt with under Article 45 (orders for custody, etc.) of the Matrimonial Causes (Northern Ireland) Order 1978(1).

### **Adoption by one person**

**15.**—(1) An adoption order may be made on the application of one person where he has attained the age of 21 years and—

- (a) is not married, or
- (b) is married and the court is satisfied that—
  - (i) his spouse cannot be found, or
  - (ii) the spouses have separated and are living apart, and the separation is likely to be permanent, or
  - (ii) his spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.

(2) An adoption order shall not be made on the application of one person unless he is domiciled in a part of the United Kingdom, or in any of the Channel Islands or in the Isle of Man.

(3) An adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that—

- (a) the other natural parent is dead or cannot be found, or
- (b) there is some other reason justifying the exclusion of the other natural parent,

and where such an order is made the reason justifying the exclusion of the other natural parent shall be recorded by the court.

(4) If the applicant is a step-parent of the child the court shall dismiss the application if it considers the matter would be better dealt with under Article 45 (orders for custody, etc.) of the Matrimonial Causes (Northern Ireland) Order 1978(2).

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(1) 1978 NI 15  
(2) 1978 NI 15

## Parental agreement

16.—(1) An adoption order shall not be made unless—

- (a) the child is free for adoption by virtue of an order made in Northern Ireland under Article 17(1) or 18(1), made in England and Wales under section 18 of the Adoption Act 1976<sup>(3)</sup> (freeing children for adoption in England and Wales) or made in Scotland under section 18 of the Adoption (Scotland) Act 1978<sup>(4)</sup> (freeing children for adoption in Scotland); or
- (b) in the case of each parent or guardian of the child the court is satisfied that—
  - (i) he freely, and with full understanding of what is involved, agrees—
    - (aa) either generally in respect of the adoption of the child or only in respect of the adoption of the child by a specified person, and
    - (ab) either unconditionally or subject only to a condition with respect to the religious persuasion in which the child is to be brought up, to the making of an adoption order; or
  - (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in paragraph (2).

(2) The grounds mentioned in paragraph (1)(b)(ii) are that the parent or guardian—

- (a) cannot be found or is incapable of giving agreement;
- (b) is withholding his agreement unreasonably;
- (c) has persistently failed without reasonable cause to discharge the parental duties in relation to the child;
- (d) has abandoned or neglected the child;
- (e) has persistently ill-treated the child;
- (f) has seriously ill-treated the child (subject to paragraph (4)).

(3) Agreement by the mother of the child is ineffective for the purposes of paragraph (2)(b)(i) if given less than 6 weeks after the child's birth.

(4) Paragraph (2)(f) does not apply unless (because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of the parent or guardian is unlikely.

(5) The reference in paragraph (1)(b) to a parent of a child does not include a reference to any person having the rights and powers of a parent of the child by virtue of—

- (a) section 91 of, or paragraph 14(1) of Schedule 5 to the Children and Young Persons Act (Northern Ireland) 1968<sup>(5)</sup> (which relate to the exercise of parental rights in respect of children and young persons committed to the care of fit persons or ordered to be sent to training schools);
- (b) section 105 of that Act (which applies to children in respect of whom the parental rights are vested in the Department by virtue of a parental rights order made under section 104 of that Act).

## *Freeing for adoption*

### Freeing child for adoption with parental agreement

17.—(1) Subject to paragraph (2), where, on the joint application of the parents or guardian of the child and an adoption agency, an authorised court is satisfied in the case of each parent or guardian

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(3) 1976 c. 36

(4) 1978 c. 28

(5) 1968 c. 34 (N.I.)

that he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order the court shall make an order declaring the child free for adoption.

(2) Where, on an application for an order under paragraph (1) in relation to a child, the mother of the child satisfies the court that her spouse is not the father of the child, the court may make the order on the joint application of the mother and the adoption agency.

(3) On the making of an order under paragraph (1), the parental rights and duties relating to the child vest in the adoption agency, and paragraphs (2) and (3) of Article 12 apply as if the order were an adoption order and the agency were the adopters.

(4) Agreement by the mother of the child is ineffective for the purposes of this Article if given less than 6 weeks after the child's birth.

(5) Before making an order under paragraph (1), the court shall satisfy itself, in relation to each parent or guardian of the child who can be found, that he has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.

(6) Before making an adoption order or an order under paragraph (1) in the case of an illegitimate child whose father is not his guardian, the court shall satisfy itself that all reasonable steps have been taken to identify the father of the child and that he has been given notice of, and the opportunity of appearing at, the proceedings.

### **Freeing child for adoption without parental agreement**

**18.**—(1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of a child that his agreement to the making of an adoption order should be dispensed with on a ground specified in Article 16(2) the court shall make an order declaring the child free for adoption.

(2) No application shall be made under paragraph (1) unless—

- (a) the child is in the care of the adoption agency; and
- (b) the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.

(3) Paragraphs (3), (5) and (6) of Article 17 shall apply to an order made by a court under paragraph (1) as they apply to an order made by a court under Article 17(1).

### **Progress reports to former parent**

**19.**—(1) This Article and Article 20 apply to any person (“the former parent”) who was required to be given an opportunity of making a declaration under Article 17(5) or by virtue of Article 18(3) but did not do so.

(2) If at any time the former parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—

- (a) the agency shall secure that the declaration is recorded by the court which made the order freeing the child for adoption, and
- (b) paragraphs (3) and (4) and Article 20 shall not apply as respects that former parent.

(3) Within the 14 days following the date 12 months after the making of the order freeing the child for adoption the adoption agency in which the parental rights and duties were vested on the making of the order, unless it has previously by notice to the former parent informed him that an adoption order has been made in respect of the child, shall by notice to the former parent inform him—

- (a) whether an adoption order has been made in respect of the child, and (if not)
- (b) whether the child has his home with a person with whom he has been placed for adoption.

(4) If at the time when the former parent is given notice under paragraph (3) an adoption order has not been made in respect of the child, the adoption agency shall give notice to the former parent of the making of an adoption order (if and when made), and meanwhile shall give the former parent notice whenever the child is placed for adoption or ceases to have his home with a person with whom he has been placed for adoption.

### **Revocation of order freeing child for adoption**

**20.**—(1) The former parent, at any time more than 12 months after the making of the order freeing the child for adoption when—

(a) no adoption order has been made in respect of the child, and

(b) the child does not have his home with a person with whom he has been placed for adoption, may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume the parental rights and duties.

(2) While the application is pending the adoption agency having the parental rights and duties shall not place the child for adoption without the leave of the court.

(3) Where an order freeing a child for adoption is revoked under this Article—

(a) the parental rights and duties relating to the child are vested in the individual or, as the case may be, the individuals in whom they vested immediately before that order was made;

(b) if the parental rights and duties, or any of them, vested in a government department, public body or voluntary organisation immediately before the order freeing the child for adoption was made, those rights and duties are vested in the individual, or as the case may be, the individuals in whom they vested immediately before they were vested in the department, body or organisation; and

(c) any duty extinguished by virtue of Article 12(3)(b) is forthwith revived,

but the revocation does not affect any right or duty so far as it relates to any period before the date of the revocation.

(4) Subject to paragraph (5), if the application is dismissed on the ground that to allow it would contravene the principle embodied in Article 9—

(a) the former parent who made the application shall not be entitled to make any further application under paragraph (1) in respect of the child, and

(b) the adoption agency is released from the duty of complying further with Article 19(3) as respects that parent.

(5) Paragraph (4)(a) shall not apply where the court which dismissed the application gives leave to the former parent to make a further application under paragraph (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

### **Transfer of parental rights and duties between adoption agencies**

**21.** On the joint application of an adoption agency in which the parental rights and duties relating to a child who is in Northern Ireland are vested under Article 17(3) or this Article or by virtue of Article 18(3) or under section 18(5) or 21 of the Adoption Act 1976<sup>(6)</sup> or under section 18(5) or 21 of the Adoption (Scotland) Act 1978<sup>(7)</sup> and any other adoption agency, an authorised court may if it thinks fit by order transfer the parental rights and duties to the latter agency.

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<sup>(6)</sup> 1976 c. 36

<sup>(7)</sup> 1978 c. 28

### *Supplemental*

#### **Notification to Board of adoption application, where child not placed by adoption agency**

**22.**—(1) An adoption order shall not be made in respect of a child who was not placed with the applicant by an adoption agency unless the applicant has, at least 3 months before the date of the order, served notice on the Board within whose area he has his home of his intention to apply for the adoption order.

(2) On receipt of such a notice the Board shall investigate the matter and submit to the court a report of its investigation and shall assist the court in any manner the court may direct.

(3) Under paragraph (2), the Board shall in particular investigate,—

(a) so far as is practicable, the suitability of the applicant, and any other matters relevant to the operation of Article 9 in relation to the application; and

(b) whether the child was placed with the applicant in contravention of Article 11.

(4) A Board which receives notice under paragraph (1) in respect of a child whom the Board knows to be in the care of another Board shall, not more than 7 days after the receipt of the notice, inform that other Board in writing, that it has received the notice.

#### **Enquiries to be made of Board, where child is to be placed by registered adoption society**

**23.** Where a registered adoption society is considering the placement of a child with any person for adoption, the society shall make enquiries of the Board in whose area that person's place of residence is situated so that the Board may inform the society whether or not there is any reason to believe that the proposed adoption would be detrimental to the child.

#### **Reports to court where child placed by agency**

**24.**—(1) Where an application for an adoption order relates to a child placed by an adoption agency, the agency shall submit to the court a report on the suitability of the applicants and any other matters relevant to the operation of Article 9 and shall assist the court in any manner the court may direct.

(2) Arrangements may be made by an adoption agency which has placed a child for its functions in relation to that child with respect to the report on the suitability of the applicants for adoption and any other matters relevant to the operation of Article 9 to be discharged by another adoption agency where unforeseen and exceptional circumstances make such an arrangement necessary.

#### **Restrictions on making adoption orders**

**25.**—(1) The court shall not proceed to hear an application for an adoption order in relation to a child where a previous application for a British adoption order made in relation to the child by the same persons was refused by any court unless—

(a) in refusing the previous application the court directed that this paragraph should not apply, or

(b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

(2) The court shall not make an adoption order in relation to a child unless it is satisfied that the applicants have not, as respects the child, contravened Article 59.

(3) In this Article “British adoption order” means an adoption order, an order under the Adoption Act (Northern Ireland) 1967<sup>(8)</sup> or any provision for the adoption of a child effected under the law of any part of Great Britain or the Channel Islands or under the law of the Isle of Man.

### **Interim orders**

**26.**—(1) Where on an application for an adoption order the requirements of Articles 16(1) and 22(1) are complied with, the court may postpone the determination of the application and make an order vesting the legal custody of the child in the applicants for a probationary period not exceeding 2 years upon such terms for the maintenance of the child and otherwise as the court thinks fit.

(2) Where the probationary period specified in an order under paragraph (1) is less than 2 years, the court may by a further order extend the period to a duration not exceeding 2 years in all.

### **Care, etc., of child on refusal of adoption order**

**27.**—(1) Where on an application for an adoption order in relation to a child the court refuses to make the adoption order then—

- (a) if it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a specified Board;
- (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual, the court may by order commit the child to the care of a specified Board.

(2) Where the court makes an order under paragraph (1)(b) the order may require the payment by either or each parent to the Board, while it has the care of the child, of such weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable.

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<sup>(8)</sup> 1967 c. 35 (N.I.)