

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Adoption

Chapter 1 - Introductory

Section 1: Considerations applying to the exercise of powers

22. *Section 1* is an overarching provision that will apply whenever a court or an adoption agency (a local authority or a registered adoption society) is coming to any decision relating to the adoption of a child. This includes any decision by the court about whether or not to dispense with parental consent to adoption or to make a contact order in respect of a child under section 26. In line with the commitment made by the Government in the White Paper *Adoption: a new approach* it introduces into adoption law principles already in the Children Act 1989. This was a central recommendation of the Review of Adoption Law. The paramount consideration of the court or agency in any decision is the child's welfare (*subsection (2)*). This brings the welfare test into line with that in the Children Act 1989, with the important addition that the court or agency must consider the child's welfare throughout his life, in recognition of the lifelong implications of adoption. The court or agency must also bear in mind that in general any delay is likely to prejudice the child's welfare (*subsection (3)*).
23. A welfare checklist is set out in *subsection (4)* and must be applied by the court or agency in determining the best interests of the child in any decision relating to adoption. This is modelled on the equivalent provision in the Children Act 1989, but is tailored to address the particular circumstances of adoption. It includes a requirement to have regard to the child's ascertainable wishes and feelings about the decision (having regard to his age and understanding) and to his particular needs (for example, physical or educational). It also obliges the court or agency to have regard to the relationship the child has with his relatives, the prospects of, and benefits to, the child of this relationship continuing, the ability of his relatives to provide the child with a secure home and to meet his needs, and their views concerning the decision relating to the adoption of the child. 'Relative' includes the child's mother and father – see *subsection (8)*. *Subsection (5)* provides that in placing a child for adoption, the agency must give due consideration to the child's religious persuasion, racial origin, cultural and linguistic background. This is in line with the duty placed on local authorities by section 22(5) (c) of the Children Act 1989, when they take any decision about a 'looked after' child, including where they should be placed.
24. In taking any decision relating to the adoption of a child the court or agency will have to consider the whole range of powers available to it under the Act and the Children Act 1989 and a court may only make an order where it considers that it would be better for the child than making no order (*subsection (6)*).