

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 -Miscellaneous and Final Provisions

Chapter 1 – Miscellaneous

Section 123: Restrictions on advertisements etc.

304. *Section 123* is a restatement and amendment of section 58 of the Adoption Act 1976. Section 58 of that Act restricts the publication of advertisements indicating that the parent or guardian of a child want that child to be adopted, that a person wants to adopt a child, or that persons other than adoption agencies are willing to make arrangements for the adoption of a child. *Section 123*, which is a United Kingdom wide provision, goes further than this. It imposes a new restriction on the distribution of such advertisements, on advertisements that a person is willing to remove a child from the United Kingdom for the purpose of adoption, and on the publication and distribution of information about how to make arrangements for the adoption of a child.
305. *Subsection (1)* provides that a person must not publish or distribute an advertisement or information to which this section applies. *Subsection (2)* provides that this section applies to an advertisement that the parent or guardian of a child wants the child to be adopted, that a person wants to adopt a child, that a person is willing to take specific steps to arrange an adoption, as set out in *section 92*, or that a person is willing to remove children from the United Kingdom for the purposes of adoption. *Subsection (3)* states that this provision also applies to information about how to do anything which, if done, would constitute an offence under *sections 85 or 93* and the mirror provisions of the Adoption (Scotland) Act 1978 and the Adoption (Northern Ireland) Order 1987, and to information about a particular child as a child available for adoption.
306. *Subsection (4)* defines publishing and distribution. This provision covers all forms of publication and distribution, including electronic means such as the internet. *Subsection (5)* provides that this section does not apply to publication or distribution by or on behalf of an adoption agency. Under *subsection (6)* the Secretary of State may by order make any amendments of this section necessary to take into account developments in technology relating to publishing or distributing advertisements or other information by electronic or electro-magnetic means.
307. Any such order cannot be made without being approved by both the House of Commons and the House of Lords. Before exercising the power provided by *subsection (6)* the Secretary of State must, under *subsection (8)*, consult the Scottish Ministers, the Department of Health, Social Services and Public Safety (in Northern Ireland) and the Assembly. *Subsection (7)* provides that the Secretary of State may make regulations to prescribe that a body outside the United Kingdom is for the purposes of section 123 to be treated as a United Kingdom adoption agency if it corresponds in its functions to a United Kingdom adoption agency. As a consequence, such a body would not then be considered to be acting in contravention of section 123 if it were to advertise in

*These notes refer to the Adoption and Children Act 2002
(c.38) which received Royal Assent on 7th November 2002*

the United Kingdom. *Subsection (9)* also provides that an adoption agency includes a Scottish or Northern Irish adoption agency.