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Adoption and Children Act 2002

2002 CHAPTER 38

PART 1

ADOPTION

CHAPTER 2

THE ADOPTION SERVICE

VALID FROM 10/03/2003

The Adoption Service

2 Basic definitions

(1) The services maintained by local authorities under section 3(1) may be collectively referred to as "the Adoption Service", and a local authority or registered adoption society may be referred to as an adoption agency.

(2) In this Act, "registered adoption society" means a voluntary organisation which is an adoption society registered under Part 2 of the Care Standards Act 2000 (c. 14); but in relation to the provision of any facility of the Adoption Service, references to a registered adoption society or to an adoption agency do not include an adoption society which is not registered in respect of that facility.

(3) A registered adoption society is to be treated as registered in respect of any facility of the Adoption Service unless it is a condition of its registration that it does not provide that facility.

(4) No application for registration under Part 2 of the Care Standards Act 2000 may be made in respect of an adoption society which is an unincorporated body.

(5) In this Act—

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"the 1989 Act" means the Children Act 1989 (c. 41),

"adoption society" means a body whose functions consist of or include making arrangements for the adoption of children,

"voluntary organisation" means a body other than a public or local authority the activities of which are not carried on for profit.

(6) In this Act, "adoption support services" means—

(a) counselling, advice and information, and

(b) any other services prescribed by regulations,

in relation to adoption.

(7) The power to make regulations under subsection (6)(b) is to be exercised so as to secure that local authorities provide financial support.

(8) In this Chapter, 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.

VALID FROM 07/12/2004

3 Maintenance of Adoption Service

(1) Each local authority must continue to maintain within their area a service designed to meet the needs, in relation to adoption, of—

(a) children who may be adopted, their parents and guardians,

(b) persons wishing to adopt a child, and

(c) adopted persons, their parents, natural parents and former guardians;

and for that purpose must provide the requisite facilities.

(2) Those facilities must include making, and participating in, arrangements—

(a) for the adoption of children, and

(b) for the provision of adoption support services.

(3) As part of the service, the arrangements made for the purposes of subsection (2)(b)—

(a) must extend to the provision of adoption support services to persons who are within a description prescribed by regulations,

(b) may extend to the provision of those services to other persons.

(4) A local authority may provide any of the requisite facilities by securing their provision by—

(a) registered adoption societies, or

(b) other persons who are within a description prescribed by regulations of persons who may provide the facilities in question.

(5) The facilities of the service must be provided in conjunction with the local authority's other social services and with registered adoption societies in their area, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.

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(6) The social services referred to in subsection (5) are the functions of a local authority which are social services functions within the meaning of the Local Authority Social Services Act 1970 (c. 42) (which include, in particular, those functions in so far as they relate to children).

4 Assessments etc. for adoption support services

(1) A local authority must at the request of—
- (a) any of the persons mentioned in paragraphs (a) to (c) of section 3(1), or
- (b) any other person who falls within a description prescribed by regulations (subject to subsection (7)(a)),

carry out an assessment of that person's needs for adoption support services.

(2) A local authority may, at the request of any person, carry out an assessment of that person's needs for adoption support services.

(3) A local authority may request the help of the persons mentioned in paragraph (a) or (b) of section 3(4) in carrying out an assessment.

(4) Where, as a result of an assessment, a local authority decide that a person has needs for adoption support services, they must then decide whether to provide any such services to that person.

(5) If—
- (a) a local authority decide to provide any adoption support services to a person, and
- (b) the circumstances fall within a description prescribed by regulations,

the local authority must prepare a plan in accordance with which adoption support services are to be provided to the person and keep the plan under review.

(6) Regulations may make provision about assessments, preparing and reviewing plans, the provision of adoption support services in accordance with plans and reviewing the provision of adoption support services.

(7) The regulations may in particular make provision—
- (a) as to the circumstances in which a person mentioned in paragraph (b) of subsection (1) is to have a right to request an assessment of his needs in accordance with that subsection,
- (b) about the type of assessment which, or the way in which an assessment, is to be carried out,
- (c) about the way in which a plan is to be prepared,
- (d) about the way in which, and time at which, a plan or the provision of adoption support services is to be reviewed,
- (e) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan,
- (f) as to the circumstances in which a local authority may provide adoption support services subject to conditions,
- (g) as to the consequences of conditions imposed by virtue of paragraph (f) not being met (including the recovery of any financial support provided by a local authority),

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(h) 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,

(i) as to the circumstances in which a local authority may recover from another local authority the expenses of providing adoption support services to any person.

(8) A local authority may carry out an assessment of the needs of any person under this section at the same time as an assessment of his needs is made under any other enactment.

(9) If at any time during the assessment of the needs of any person under this section, it appears to a local authority that—

(a) there may be a need for the provision of services to that person by a Primary Care Trust (in Wales, a Health Authority or Local Health Board), or

(b) there may be a need for the provision to him of any services which fall within the functions of a local education authority (within the meaning of the Education Act 1996 (c. 56)),

the local authority must notify that Primary Care Trust, Health Authority, Local Health Board or local education authority.

(10) Where it appears to a local authority that another local authority could, by taking any specified action, help in the exercise of any of their functions under this section, they may request the help of that other local authority, specifying the action in question.

(11) A local authority whose help is so requested must comply with the request if it is consistent with the exercise of their functions.

PROSPECTIVE

[F1]5 Local authority plans for adoption services

. . . . . .

Textual Amendments

F1 S. 5 repealed (1.3.2005 for E., 1.4.2006 for W.) by Children Act 2004 (c. 31), **Sch. 5 Pt. 1**; S.I. 2005/394, art. 2(1)(l); S.I. 2006/885, art. 2(h)

VALID FROM 30/12/2005

6 Arrangements on cancellation of registration

Where, by virtue of the cancellation of its registration under Part 2 of the Care Standards Act 2000 (c. 14), a body has ceased to be a registered adoption society, the appropriate Minister may direct the body to make such arrangements as to the transfer of its functions relating to children and other transitional matters as seem to him expedient.

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VALID FROM 30/12/2005

7 Inactive or defunct adoption societies etc.

(1) This section applies where it appears to the appropriate Minister that—
- (a) a body which is or has been a registered adoption society is inactive or defunct, or
- (b) a body which has ceased to be a registered adoption society by virtue of the cancellation of its registration under Part 2 of the Care Standards Act 2000 has not made such arrangements for the transfer of its functions relating to children as are specified in a direction given by him.

(2) The appropriate Minister may, in relation to such functions of the society as relate to children, direct what appears to him to be the appropriate local authority to take any such action as might have been taken by the society or by the society jointly with the authority.

(3) A local authority are entitled to take any action which—
- (a) apart from this subsection the authority would not be entitled to take, or would not be entitled to take without joining the society in the action, but
- (b) they are directed to take under subsection (2).

(4) The appropriate Minister may charge the society for expenses necessarily incurred by him or on his behalf in securing the transfer of its functions relating to children.

(5) Before giving a direction under subsection (2) the appropriate Minister must, if practicable, consult both the society and the authority.

VALID FROM 30/12/2005

8 Adoption support agencies

(1) In this Act, "adoption support agency" means an undertaking the purpose of which, or one of the purposes of which, is the provision of adoption support services; but an undertaking is not an adoption support agency—
- (a) merely because it provides information in connection with adoption other than for the purpose mentioned in section 98(1), or
- (b) if it is excepted by virtue of subsection (2).

"Undertaking" has the same meaning as in the Care Standards Act 2000 (c. 14).

(2) The following are excepted—
- (a) a registered adoption society, whether or not the society is registered in respect of the provision of adoption support services,
- (b) a local authority,
- (c) a local education authority (within the meaning of the Education Act 1996 (c. 56)),
- (d) a Special Health Authority, Primary Care Trust (in Wales, a Health Authority or Local Health Board) **[**[F2], NHS trust or NHS foundation trust**]**,
- (e) the Registrar General,

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(f) any person, or description of persons, excepted by regulations.

(3) In section 4 of the Care Standards Act 2000 (basic definitions)—

(a) after subsection (7) there is inserted—

"(7A) "Adoption support agency" has the meaning given by section 8 of the Adoption and Children Act 2002.",

(b) in subsection (9)(a) (construction of references to descriptions of agencies), for "or a voluntary adoption agency" there is substituted " a voluntary adoption agency or an adoption support agency ".

Textual Amendments

F2 Words in s. 8(2)(d) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 4 para. 126**; S.I. 2004/759, art. 2

VALID FROM 07/02/2004

Regulations

9 General power to regulate adoption etc. agencies

(1) Regulations may make provision for any purpose relating to—

(a) the exercise by local authorities or voluntary adoption agencies of their functions in relation to adoption, or

(b) the exercise by adoption support agencies of their functions in relation to adoption.

(2) The extent of the power to make regulations under this section is not limited by sections 10 to 12, 45, 54, 56 to 65 and 98 or by any other powers exercisable in respect of local authorities, voluntary adoption agencies or adoption support agencies.

(3) Regulations may provide that a person who contravenes or fails to comply with any provision of regulations under this section is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In this section and section 10, "voluntary adoption agency" means a voluntary organisation which is an adoption society.

10 Management etc. of agencies

(1) In relation to local authorities, voluntary adoption agencies and adoption support agencies, regulations under section 9 may make provision as to—

(a) the persons who are fit to work for them for the purposes of the functions mentioned in section 9(1),

(b) the fitness of premises,

(c) the management and control of their operations,

(d) the number of persons, or persons of any particular type, working for the purposes of those functions,

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(e) the management and training of persons working for the purposes of those functions,

(f) the keeping of information.

(2) Regulations made by virtue of subsection (1)(a) may, in particular, make provision for prohibiting persons from working in prescribed positions unless they are registered in, or in a particular part of, one of the registers maintained under section 56(1) of the Care Standards Act 2000 (c. 14) (registration of social care workers).

(3) In relation to voluntary adoption agencies and adoption support agencies, regulations under section 9 may—

(a) make provision as to the persons who are fit to manage an agency, including provision prohibiting persons from doing so unless they are registered in, or in a particular part of, one of the registers referred to in subsection (2),

(b) impose requirements as to the financial position of an agency,

(c) make provision requiring the appointment of a manager,

(d) in the case of a voluntary adoption agency, make provision for securing the welfare of children placed by the agency, including provision as to the promotion and protection of their health,

(e) in the case of an adoption support agency, make provision as to the persons who are fit to carry on the agency.

(4) Regulations under section 9 may make provision as to the conduct of voluntary adoption agencies and adoption support agencies, and may in particular make provision—

(a) as to the facilities and services to be provided by an agency,

(b) as to the keeping of accounts,

(c) as to the notification to the registration authority of events occurring in premises used for the purposes of an agency,

(d) as to the giving of notice to the registration authority of periods during which the manager of an agency proposes to be absent, and specifying the information to be given in such a notice,

(e) as to the making of adequate arrangements for the running of an agency during a period when its manager is absent,

(f) as to the giving of notice to the registration authority of any intended change in the identity of the manager,

(g) as to the giving of notice to the registration authority of changes in the ownership of an agency or the identity of its officers,

(h) requiring the payment of a prescribed fee to the registration authority in respect of any notification required to be made by virtue of paragraph (g),

(i) requiring arrangements to be made for dealing with complaints made by or on behalf of those seeking, or receiving, any of the services provided by an agency and requiring the agency or manager to take steps for publicising the arrangements.

11 Fees

(1) Regulations under section 9 may prescribe—

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(a) the fees which may be charged by adoption agencies in respect of the provision of services to persons providing facilities as part of the Adoption Service (including the Adoption Services in Scotland and Northern Ireland),

(b) the fees which may be paid by adoption agencies to persons providing or assisting in providing such facilities.

(2) Regulations under section 9 may prescribe the fees which may be charged by local authorities in respect of the provision of prescribed facilities of the Adoption Service where the following conditions are met.

(3) The conditions are that the facilities are provided in connection with—

(a) the adoption of a child brought into the United Kingdom for the purpose of adoption, or

(b) a Convention adoption, an overseas adoption or an adoption effected under the law of a country or territory outside the British Islands.

(4) Regulations under section 9 may prescribe the fees which may be charged by adoption agencies in respect of the provision of counselling, where the counselling is provided in connection with the disclosure of information in relation to a person's adoption.

12 Independent review of determinations

(1) Regulations under section 9 may establish a procedure under which any person in respect of whom a qualifying determination has been made by an adoption agency may apply to a panel constituted by the appropriate Minister for a review of that determination.

(2) The regulations must make provision as to the description of determinations which are qualifying determinations for the purposes of subsection (1).

(3) The regulations may include provision as to—

(a) the duties and powers of a panel (including the power to recover the costs of a review from the adoption agency by which the determination reviewed was made),

(b) the administration and procedures of a panel,

(c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment),

(d) the payment of expenses of members of a panel,

(e) the duties of adoption agencies in connection with reviews conducted under the regulations,

(f) the monitoring of any such reviews.

(4) The appropriate Minister may make an arrangement with an organisation under which functions in relation to the panel are performed by the organisation on his behalf.

(5) If the appropriate Minister makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by the appropriate Minister.

(6) The arrangement may include provision for payments to be made to the organisation by the appropriate Minister.

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(7) Where the appropriate Minister is the Assembly, subsections (4) and (6) also apply as if references to an organisation included references to the Secretary of State.

(8) In this section, "organisation" includes a public body and a private or voluntary organisation.

Supplemental

VALID FROM 30/12/2005

13 Information concerning adoption

(1) Each adoption agency must give to the appropriate Minister any statistical or other general information he requires about—
  (a) its performance of all or any of its functions relating to adoption,
  (b) the children and other persons in relation to whom it has exercised those functions.

(2) The following persons—
  (a) the **[**[F3]designated officer**]** for each magistrates' court,
  (b) the relevant officer of each county court,
  (c) the relevant officer of the High Court,

  must give to the appropriate Minister any statistical or other general information he requires about the proceedings under this Act of the court in question.

(3) In subsection (2), "relevant officer", in relation to a county court or the High Court, means the officer of that court who is designated to act for the purposes of that subsection by a direction given by the Lord Chancellor.

(4) The information required to be given to the appropriate Minister under this section must be given at the times, and in the form, directed by him.

(5) The appropriate Minister may publish from time to time abstracts of the information given to him under this section.

Textual Amendments

F3 Words in s. 13(2) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 411**; S.I. 2005/910, art. 3(y)

VALID FROM 30/12/2005

14 Default power of appropriate Minister

(1) If the appropriate Minister is satisfied that any local authority have failed, without reasonable excuse, to comply with any of the duties imposed on them by virtue of this Act or of section 1 or 2(4) of the Adoption (Intercountry Aspects) Act 1999 (c. 18), he may make an order declaring that authority to be in default in respect of that duty.

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(2) An order under subsection (1) must give the appropriate Minister's reasons for making it.

(3) An order under subsection (1) may contain such directions as appear to the appropriate Minister to be necessary for the purpose of ensuring that, within the period specified in the order, the duty is complied with.

(4) Any such directions are enforceable, on the appropriate Minister's application, by a mandatory order.

VALID FROM 30/12/2005

15 Inspection of premises etc.

(1) The appropriate Minister may arrange for any premises in which—
  (a) a child is living with a person with whom the child has been placed by an adoption agency, or
  (b) a child in respect of whom a notice of intention to adopt has been given under section 44 is, or will be, living,

to be inspected from time to time.

(2) The appropriate Minister may require an adoption agency—
  (a) to give him any information, or
  (b) to allow him to inspect any records (in whatever form they are held),

relating to the discharge of any of its functions in relation to adoption which the appropriate Minister specifies.

(3) An inspection under this section must be conducted by a person authorised by the appropriate Minister.

(4) An officer of a local authority may only be so authorised with the consent of the authority.

(5) A person inspecting any premises under subsection (1) may—
  (a) visit the child there,
  (b) make any examination into the state of the premises and the treatment of the child there which he thinks fit.

(6) A person authorised to inspect any records under this section may at any reasonable time have access to, and inspect and check the operation of, any computer (and associated apparatus) which is being or has been used in connection with the records in question.

(7) A person authorised to inspect any premises or records under this section may—
  (a) enter the premises for that purpose at any reasonable time,
  (b) require any person to give him any reasonable assistance he may require.

(8) A person exercising a power under this section must, if required to do so, produce a duly authenticated document showing his authority.

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(9) Any person who intentionally obstructs another in the exercise of a power under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

16 Distribution of functions in relation to registered adoption societies

After section 36 of the Care Standards Act 2000 (c. 14) there is inserted—

"36A Voluntary adoption agencies: distribution of functions

(1) This section applies to functions relating to voluntary adoption agencies conferred on the registration authority by or under this Part or under Chapter 2 of Part 1 of the Adoption and Children Act 2002.

(2) Subject to the following provisions, functions to which this section applies are exercisable—
  (a) where the principal office of an agency is in England, by the Commission,
  (b) where the principal office of an agency is in Wales, by the Assembly.

(3) So far as those functions relate to the imposition, variation or removal of conditions of registration, they may only be exercised after consultation with the Assembly or (as the case may be) the Commission.

(4) But—
  (a) where such a function as is mentioned in subsection (3) is exercisable by the Commission in relation to an agency which has a branch in Wales, it is exercisable only with the agreement of the Assembly,
  (b) where such a function as is mentioned in subsection (3) is exercisable by the Assembly in relation to an agency which has a branch in England, it is exercisable only with the agreement of the Commission.

(5) The functions conferred on the registration authority by sections 31 and 32 of this Act in respect of any premises of a voluntary adoption agency are exercisable—
  (a) where the premises are in England, by the Commission
  (b) where the premises are in Wales, by the Assembly.

(6) In spite of subsections (2) to (5), regulations may provide for any function to which this section applies to be exercisable by the Commission instead of the Assembly, or by the Assembly instead of the Commission, or by one concurrently with the other, or by both jointly or by either with the agreement of or after consultation with the other.

(7) In this section, "regulations" means regulations relating to England and Wales."

Commencement Information

I1 S. 16 in force at 1.2.2003 for W. by S.I. 2003/181, **art. 2**

I2 S. 16 in force at 25.2.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(1)(a)**

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PROSPECTIVE

[F4]17 Inquiries

. . . . . .

Textual Amendments

F4 S. 17 repealed (7.6.2005) by Inquiries Act 2005 (c. 12), s. 51(1), Sch. 2 para. 23, **Sch. 3** (with ss. 44, 50); S.I. 2005/1432, art. 2

Status:
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