

# ADOPTION AND CHILDREN ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Adoption

#### *Chapter 3 - Placement for Adoption and Adoption Orders*

70. *Sections 18 to 29* introduce new provisions for the placement of children for adoption. An adoption agency may (except in the case of a child who is less than 6 weeks old – see paragraph 74) only place a child for adoption with the consent of the parent or guardian (referred to in these notes as the ‘parent’) under *section 19* or under an order made by the court authorising a local authority to place a child with any prospective adopters chosen by them (“a placement order”- see *section 21*). Provision is made for who is to have parental responsibility for the child and the other consequences of placement with consent and placement orders.
71. The intention is to ensure key decisions are taken earlier in the adoption process than at present, with court involvement where necessary. This is intended to provide greater certainty and stability for children by dealing with consent to placement for adoption before they have been placed (at present this issue is often not addressed until the final adoption order hearing); to minimise the uncertainty for prospective adopters, who under the current system possibly face a contested court hearing at the adoption order stage; and to reduce the extent to which birth families are faced with a ‘fait accompli’ at the final adoption hearing (as they may be under the current system, where their child has not been freed for adoption but has been placed with an adoptive family for some time before the application for an adoption order is made).
72. A flowchart summarising the placement process is attached at Annex A.

#### *Section 18: Placement for adoption by agencies*

73. *Section 18(1)* provides that an adoption agency (except in the case of a child who is less than 6 weeks old) may only place a child for adoption with prospective adopters where the parent of the child has consented to the placement or, in the case of a local authority, where it has obtained a placement order. *Subsection (2)* provides that an adoption agency may not place a child for adoption with prospective adopters unless the agency is satisfied that the child ought to be placed for adoption. Where a child is placed or authorised to be placed for adoption by a local authority, the child is a looked after child for the purposes of the Children Act 1989 (*subsection (3)*).
74. An adoption agency may place a child who is less than 6 weeks old (“baby placement”) for adoption with the voluntary agreement of the parent or guardian. Regulations made under *section 9* will set out the process for obtaining this agreement. *Subsection (3)* applies to such a child. When the child reaches the age of 6 weeks and adoption remains the plan, the agency should obtain the consent of the parent or a placement order.
75. Under *subsection (5)* placement has been given an extended meaning under the Act covering both placing a child with prospective adopters and, where the child is already

placed with people for other purposes (for example with foster carers), leaving the child with them as approved prospective adopters. It will be open to local authority foster parents to seek formal approval from the local authority as prospective adopters in respect of a child being fostered by them. If they are approved as prospective adopters and the agency leave the child with them as prospective adopters, the placement will be an agency placement and there will be no need for them to give formal notice under [section 44](#). If the agency does not approve them as prospective adopters, local authority foster carers can independently give notice of intention to apply to adopt the child as a non-agency case, providing the condition in [section 42\(4\)](#) is met.

76. Under [subsection \(6\)](#) references in Chapter 3 to an agency being, or not being, authorised to place a child for adoption are to the agency being or not being authorised to do so under [section 19](#) or a placement order. This means that where a child who is less than 6 weeks old is placed for adoption [section 25](#), for example, will not apply.

### ***Section 19: Placing children with parental consent***

77. [Section 19](#) makes provision for placing children with parental consent. It allows an adoption agency to place a child for adoption where it is satisfied each parent has given consent to placement and that consent has not been withdrawn. Placement with consent may be with prospective adopters identified in the consent or with any prospective adopters who may be chosen by the agency ([subsection \(1\)](#)). Consent to placement with prospective adopters identified in the consent may be combined with consent to the child being subsequently placed for adoption with any prospective adopters who may be chosen by the agency ([subsection \(2\)](#)). Consent can be withdrawn at any point before an application for the adoption order is made.

78. [Subsection \(3\)](#) provides that where an application has been made as a result of which a care order under the Children Act 1989 may be made and that application is pending, the provisions relating to placement of children with parental consent do not apply. Where a local authority is satisfied such a child should be adopted it must apply for a placement order under [section 22\(2\)](#). Where a child is placed for adoption with consent and a care order or a placement order is subsequently made in respect of the child, the authority to place for adoption provided as a result of the earlier [section 19](#) consent no longer applies. Where a child is placed for adoption with consent and a special guardianship order is subsequently made in respect of the child, the authority to place no longer applies unless the special guardian consents, as their consent is required under [section 19\(1\)](#). Where a child is placed with prospective adopters and consent is then withdrawn the child continues to be treated as placed for adoption until the child is returned to the parents or any placement order application is determined ([subsection \(4\)](#)). [Section 19](#) is subject to the provisions in [section 52](#) relating to what is meant by consent. Consent must be given in a prescribed form and to ensure it is properly given in full understanding of what it involves it is intended that it will be witnessed by an officer of the Children and Family Court Advisory and Support Service, provided for by rules made under [section 102](#).

### ***Section 20: Advance consent to adoption***

79. [Section 20](#) enables a parent who consents to his child being placed for adoption by an adoption agency to give consent at the same time to the making of a future adoption order ('advance consent'). As with placement with consent, advance consent may be to adoption by prospective adopters identified in the consent or by any prospective adopters who may be chosen by the agency. [Subsection \(3\)](#) provides that consent may be withdrawn. It must be withdrawn by notice in writing to the agency or in the form prescribed (see [section 52\(8\)](#)). [Subsection \(4\)](#) enables a parent who gives advance consent to adoption to give notice to the agency that he does not wish to be informed when an application for an adoption order is made, and to withdraw any such notice. This provision allows a parent who wishes to relinquish their child for adoption to do so, and to provide that they need have no further involvement in the adoption proceedings.

80. *Subsection (6)* provides that this section is subject to the provisions in [section 52](#) relating to what is meant by consent.

### ***Section 21: Placement orders***

81. [Section 21](#) defines a placement order. It is an order made by the court authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority (*subsection (1)*). Only local authorities are able to apply for placement orders. *Subsection (2)* provides that the court may not make a placement order unless the child is already subject to a care order or it has the power to make a care order under section 31(2) of the Children Act 1989. In order to be able to make a care order (and therefore a placement order) the court must first be satisfied that the child concerned is suffering, or likely to suffer, significant harm, and that this is attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him, or the child is beyond parental control. The only exception to this is where the child has no parent or guardian. In these cases the Children Act 1989 'significant harm' threshold in section 31(2) does not apply. This is to allow local authorities to place orphaned children for adoption.
82. Linking the making of placement orders to these provisions in the Children Act 1989 is intended to deliver on the Government's undertaking to align adoption law with the Children Act 1989. The same threshold for compulsory intervention in family life is to apply where a local authority seeks authority to place a child for adoption without parental consent as applies where an authority seeks to take a child into care under a care order. In placement order cases, where the court is satisfied that the 'significant harm' threshold is met, it will then consider whether a placement order should be made. The [section 1](#) provisions will apply: the child's welfare will be the paramount consideration, the court will apply the welfare checklist set out in [section 1\(4\)](#), the court will have to consider its full range of powers, and will only make the order if it is better for the child than not to do so.
83. *Subsection (3)* provides that the court may only make a placement order if it is satisfied that the parent has consented to the child being placed for adoption with any prospective adopters who may be chosen by the agency and has not withdrawn that consent or that the parent's consent should be dispensed with. The grounds for dispensing with consent are set out in [section 52\(1\)](#). A placement order will continue in force until it is revoked, an adoption order is made in respect of the child or the child marries or reaches 18 (*subsection (4)*).

### ***Section 22: Applications for placement orders***

84. [Section 22](#) sets out when a local authority must apply for a placement order. An authority must apply for a placement order when the child is placed for adoption or is accommodated by a local authority, they are satisfied that the child ought to be placed for adoption, the parent does not consent to placement for adoption and either the child has no parent or guardian or the authority consider the threshold criteria in section 31(2) of the Children Act 1989 are met (*subsection (1)*). This might occur for example where the parent has withdrawn consent to placement for adoption but the authority remains of the view the child should be adopted.
85. Where an application is pending on which a care order under the Children Act 1989 might be made, or the child is subject to a care order but the parent does not consent to the placement of a child for adoption, and the local authority are satisfied that the child should be placed for adoption, they must apply to the court for a placement order (*subsection (2)*). If the child is subject to a care order and the parent or guardian is prepared to consent to the placement of the child for adoption, the authority have a discretion as to whether to apply for a placement order (*subsection (3)*). Alternatively, they could decide to place the child with parental consent under [section 19](#).

86. *Subsection (4)* provides that where an application for a placement order is pending, the child is a looked after child for the purposes of the Children Act 1989 until the application is determined. If a placement order is made the child continues to count as looked after by virtue of *section 18(3)*. *Subsection (6)* enables the court where the application for a placement order is pending and no interim care order has been made to give directions for the child to undergo medical, psychiatric or other assessment.
87. The application for a placement order is to be made by the appropriate local authority as defined in *subsection (7)*.

### ***Section 23: Varying placement orders***

88. *Section 23* provides that the court can vary a placement order to substitute another local authority for the authority authorised to place the child for adoption but the application has to be made by both authorities.

### ***Section 24: Revoking placement orders***

89. *Section 24* makes provision for the revocation of placement orders. A local authority or the child (or a person acting on behalf of the child) may apply to revoke a placement order at any time. Any other person, for example the parent, may apply for the revocation of a placement order with the leave of the court if the child is not yet placed for adoption by the authority. Leave cannot be given by the court unless it is satisfied that there has been a change in circumstances since the order was made.
90. *Subsection (4)* provides that a court may discharge a placement order if, at the final adoption order hearing, it decides not to make an adoption order in respect of the child. It may be that the court decides not to make the adoption order because it considers that the child should not be placed for adoption, in which case it may discharge the placement order. Alternatively, if the court considers that the child should still be placed for adoption with a view to being adopted at a future date, it may decide that the placement order shall continue.

### ***Section 25: Parental responsibility***

91. *Section 25* makes provision for who is to have parental responsibility where an agency is authorised to place a child for adoption under *section 19* or where a placement order is in force. Parental responsibility for the child is given to the agency (*subsection (2)*) and while the child is placed with prospective adopters, parental responsibility is given to them (*subsection (3)*). The child's parents retain parental responsibility throughout the process, up to the point at which any adoption order is made.
92. *Undersubsection (4)* it is for the agency to determine the extent to which the parental responsibility of any parent or guardian or of prospective adopters is to be restricted.

### ***Section 26: Contact***

93. *Sections 26 and 27* make provision for applications for contact in respect of children placed for adoption and where an adoption agency is authorised to place a child for adoption under *section 19* or under a placement order. *Subsection (1)* provides that where an adoption agency is authorised to place a child for adoption, or a child is placed for adoption who is less than 6 weeks old, any contact order under section 8 of the Children Act 1989 or an order under section 34 of that Act (parental contact with children in care) ceases to have effect. The arrangements set out in previous contact orders may no longer be appropriate. The objective should be to agree whatever new arrangements for contact are appropriate given the adoptive placement. However, should agreement not be possible, an application may be made to the court for an order for contact. The application may be made by the child or the agency or the parent or other persons who are identified in *subsection (3)*. On an application the court may make an order requiring the person with whom the child lives or is to live to allow the

child to visit or stay with the person named in the order or for that person and the child otherwise to have contact with each other.

94. *Subsection (5)* provides that *section 26* does not prevent an application for a contact order under section 8 of the Children Act 1989 being made where the application is to be heard together with an application for an adoption order. This means that at the final adoption order hearing the court may make a contact order under section 8, ensuring that the court can make whatever arrangements may be appropriate for contact following the making of the final adoption order. This replicates the position under the current legislative framework.

### ***Section 27: Contact: supplementary***

95. *Section 27* makes supplemental provision in relation to contact. There may be cases where it is inappropriate for contact to take place even though provided for under an order. *Subsection (2)* enables the agency to refuse contact for a period of not more than 7 days if it is satisfied that it is appropriate to do so in order to safeguard the child's welfare. Regulations may set out the circumstances in which the terms of any order made under *section 26* may be departed from.
96. *Subsection (4)* imposes a duty on the court when making a placement order or a final adoption order to consider the arrangements the agency has made or proposes to make in relation to contact and under *subsection (5)* the court may impose any conditions on a contact order made under section 26 as it thinks fit.

### ***Sections 28 and 29: Further consequences of placement and placement orders***

97. *Sections 28 and 29* make further provision as to the consequences of placement. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under *section 19*, a parent cannot apply for a residence order (*section 28(1)(a)*), unless an application for a final adoption order has been made and the parents have obtained the leave of the court to oppose the making of the adoption order under *section 47(3)* or *(5)*. This is to allow competing applications for residence orders from parents at contested final adoption order hearings. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under *section 19* and an application has been made for an adoption order, a guardian of the child may not apply for a special guardianship order unless he has obtained the leave of the court under *section 47(3)* or *(5)* (*section 28(1)(b)*).
98. If an agency is authorised to place a child for adoption (whether or not the child is placed) a person cannot cause the child to be known by a new surname or remove him from the United Kingdom except with the leave of the court or if each parent gives written consent. Prospective adopters with whom a child is placed cannot call the child by a different surname unless these conditions are satisfied. Prospective adopters may take him out of the United Kingdom on holiday for up to a month (*section 28(2) to (4)*).
99. *Section 29* makes further provision in relation to placement orders. Where a placement order is made in respect of a child and either the child is subject to a care order or the court makes a care order in the same proceedings, the care order is suspended during the period when the placement order is in force. On the making of a placement order, any order mentioned in section 8(1) of the Children Act 1989 (for example, residence orders) and any supervision order cease to have effect. Furthermore, where a placement order is in force a prohibited steps order, a specific issue order, a residence order and a supervision order cannot be made in respect of that child.
100. *Subsection (5)* provides that where a placement order is in force no special guardianship order may be made in respect of the child. However, once an application for a final adoption order has been made in respect of the child, a person entitled to do so may make a competing application for a special guardianship order with the leave of the court.

101. *Subsection (4)* provides that where a placement order is in force and an application for a final adoption order has been made a parent or guardian may make a competing application for a residence order providing they have the leave of the court to oppose the making of the final adoption order under *section 47(3) or (5)*. Once an application for a final adoption order has been made anyone else who is entitled to do so may make a competing application for a residence order, with the leave of the court.

### **Removal provisions**

102. *Sections 30 to 35* make provision in relation to the removal of children who are or may be placed for adoption by adoption agencies, to ensure that they are only removed from placements by authorised people in the appropriate manner. *Sections 30 to 35* apply whether or not the child in question is in England or Wales.

### ***Section 30: General prohibitions on removal***

103. *Section 30* imposes general restrictions on removal. *Section 30* is subject to *sections 31, 32 and 33*. Under subsection (1)(a) where a child is placed with prospective adopters under *section 19* it is an offence for a person other than the agency to remove the child from that placement (*subsections (1) and (8)*). Under *subsection (1)(b)* where a child is placed for adoption and either is less than 6 weeks old or the agency has at no time been authorised to place the child for adoption, the same offence applies. This ensures that where a child is placed with the mother's consent while under 6 weeks of age but the agency is later unable to secure the mother's consent under *section 19* the restrictions on removal would continue to apply to the placement.
104. *Subsection (1)* applies even if the parent has withdrawn his consent to placement. However, under *section 31* where a parent withdraws his consent to placement the agency must return the child within 7 days if the child has not yet been placed for adoption under *section 19* with prospective adopters or the child is placed and either the child is less than 6 weeks old or the agency has at no time been authorised to place the child for adoption. Under *section 32* where a parent withdraws his consent to placement the prospective adopter must return the child to the agency within 14 days if the child has been placed under *section 19* with prospective adopters, unless an application is or has been made for a placement order. If no application for a placement order has been made within seven or 14 days the agency must return the child to the parent, unless the child is subject to a care order.
105. If a child is accommodated by a local authority and they have applied for a placement order and the application has not been disposed of, the child may not be removed from the accommodation pending the determination of that application without the leave of the court (*section 30(2) and (8)*). Where an agency is authorised to place a child for adoption but the child is not yet placed and is being provided with accommodation by an agency in, for example, a foster placement or a children's home, it is an offence for a person other than the agency to remove the child from that accommodation (*subsections (3) and (8)*). *Subsection (3)* applies if the parent has withdrawn his consent to placement.
106. The general prohibitions on removal set out in this section are subject to the specific provisions made in *sections 31 to 33* (*subsection (4)*). But the provisions in *sections 30 to 33* covering prohibition on removal do not prevent the removal of a child who is arrested, or removal as a result of the exercise by a local authority or other person of a power conferred by any enactment (excluding the right under section 20(8) of the Children Act 1989 of a person who has parental responsibility for a child to remove a child voluntarily accommodated by a local authority (*subsections (6) and (7)*). *Sections 31 to 33* do not apply if the child is subject to a care order (*subsection (4)*).
107. *Subsection (8)* provides that a person who removes the child in breach of *subsection (1), (2) or (3)* is liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

***Section 31: Recovery by parent etc. where child not placed or is a baby***

108. *Section 31* applies where a child is not yet placed for adoption but is being provided with accommodation by an adoption agency and consent to placement has been withdrawn, or where a child is placed for adoption and either the child is less than 6 weeks old or the agency has at no time been authorised to place the child (*subsections (1) and (3)*). Consent to placement must be withdrawn by notice in writing to the agency or in the form prescribed. If the parent informs the agency that he wishes the child to be returned to him, the agency must return the child to him within seven days unless the agency is a local authority and they have applied for a placement order (*subsection (2)*).

***Section 32: Recovery by parent etc. where child placed and consent withdrawn***

109. *Section 32* applies where a child is placed for adoption with prospective adopters under *section 19*, the parent has withdrawn consent and the agency agrees the child should be returned to his parent (*subsection (1)*).
110. If the parent informs the agency he wishes the child to be returned to him, the agency must give notice to the prospective adopters that the parent wishes the child to be returned to him and the prospective adopters have to return the child to the agency within 14 days (*subsection (2)*). The agency must then return the child to his parent (*subsection (4)*). If the prospective adopters do not return the child, they commit an offence and are liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both (*subsection (3)*).
111. If before notice of removal is given, an application for an adoption order in England and Wales (or Scotland or Northern Ireland) or for a residence order or special guardianship order, or for leave to apply for these orders in respect of the child, and that application has not been disposed of, the prospective adopters do not have to return the child unless the court makes an order to that effect (*subsection (5)*).

***Section 33: Recovery by parent etc. where application for placement order refused***

112. *Section 33* applies where a child is placed for adoption under *section 19*, the local authority's application for a placement order has been refused and the parent wishes the child to be returned to him (*subsection (1)*). The prospective adopters must return the child to the authority on the date set by the court and as soon as they do, the child must be returned to his parent (*subsections (2) and (4)*). If the prospective adopters do not do so, they commit an offence and are liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both (*subsection (3)*).

***Section 34: Placement orders: prohibition on removal***

113. *Section 34* applies where a placement order is in force or has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by a local authority (*subsection (1)*). It is an offence, punishable as set out in paragraph 107 for a person (other than a local authority) to remove the child from the prospective adopters or accommodation provided by the agency (*subsections (1) and (5)*).
114. Where a placement order has been revoked it will be for the court when they revoke the order to determine whether the child is to remain with the prospective adopters or to be returned to the parent (*subsections (3) and (4)*). If the court determines the child should not remain with the prospective adopters, they must return the child to the local authority, otherwise they commit an offence.
115. *Subsections (4) and (5)* provide that a person who removes a child, or fails to return a child, is guilty of an offence and liable on summary conviction to imprisonment for

a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

### ***Section 35: Return of child in other cases***

116. *Section 35* applies in cases where the prospective adopters want to return the child or the adoption agency has decided that the child should not remain with the prospective adopters. In the first case the prospective adopters must give notice to the agency that they want to return the child and the agency has to collect the child (*subsection (1)*). The agency must also tell the child's parent so he may consider his position. In the second case, the agency must give notice to the prospective adopters that it does not want the child to remain with them and the prospective adopters must return the child within 7 days. Again, the agency must inform the child's parent (*subsection (2)*). If the prospective adopters fail to return the child, they commit an offence and are liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding level 5 of the standard scale, or both (*subsection (4)*).
117. If before notice of removal is given, an application was made for an adoption order in England and Wales (or Scotland or Northern Ireland) or for a residence order or special guardianship order, or for leave to apply for these orders in respect of the child, and that application has not been disposed of, the prospective adopters do not have to return the child unless the court makes an order to that effect (*subsection (5)*).

### ***Sections 36 to 40: Restrictions on removal***

118. These sections cover restrictions on the removal of the child in non-agency cases, i.e. where the child has not been placed for adoption by an adoption agency. These include adoptions by the partner of a parent, cases where local authority foster parents wish to adopt a child placed with them, and adoptions by relatives and private foster parents.

### ***Section 36: Restrictions on removal***

119. *Section 36* provides that where an application for an adoption order has been made, notice of intention to apply to adopt has been given (as required under *section 44*) or the court's leave sought to make an application, a child may only be removed in accordance with the provisions made in *sections 36 to 40*. None of the restrictions prevent removal in the case of the child being arrested. Where leave to apply to adopt has been granted the restrictions on removal extend for three days to allow notice of intention to be given (*subsection (3)*). In the case of notice of intention to adopt the restrictions on removal apply for 4 months (under *section 44* there must be a minimum of 3 months between the giving of notice and an application to adopt), but a second notice given within 5 months of the first will not trigger protection. This is to prevent the giving of repeated notices of intention to adopt as a means of preventing removal of the child (*subsection (2)*).
120. Where a parent may remove his child in accordance with *section 36*, the persons with whom the child has his home must return the child to the parent at once. A person who fails to comply with this provision or removes a child in breach of *section 36* is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both.

### ***Section 37: Applicants for adoption***

121. Where an application for adoption has been made the child may only be removed with the leave of the court, or by a local authority or other person in exercise of a power conferred by any enactment (for example, for child protection purposes under the Children Act 1989). Once an application for an adoption order has been made in respect of a child voluntarily accommodated under section 20 of the Children Act 1989 the provision in section 20(8) allowing any person who has parental responsibility to remove the child at any time does not apply.

**Section 38: Local authority foster parents**

122. Where a local authority foster parent has given notice of intention to adopt, which they may do once the child has lived with them for one year, then the child may only be removed with the leave of the court, by a local authority or other person in the exercise of a power conferred by any enactment or, if the child is voluntarily accommodated under section 20 of the Children Act 1989, by a person who has parental responsibility for the child (*subsection (5)*). But where the child has been with the foster carer for 5 years or more or an application for leave to make an application to adopt has been made but not disposed of, the right of a person with parental responsibility for the child under section 20(8) of the Children Act 1989 to remove a child does not apply (*subsections (2) and (3)*).

**Section 39: Partners of parents**

123. Where a partner of a parent has given notice of intention to apply to adopt, the child may only be removed with the leave of the court or by a local authority or person in the exercise of a power conferred by any enactment (other than section 20(8) of the Children Act 1989), or by a parent or guardian of the child (unless the child has lived with the partner of the parent for 3 out of the last 5 years, in which case a parent may not remove the child). A definition of “partner of a child’s parent” is given in *section 144(7)*.

**Section 40: Other non-agency cases**

124. In these cases where notice of intention to adopt has been given or leave has been applied for under *section 42(6)* and the application has not been disposed of, the child may only be removed with the leave of the court, by a local authority or other person acting under statutory powers (other than section 20(8) of the Children Act 1989).

**Section 41: Recovery orders**

125. *Section 41* makes provision for what is to happen where a child is removed, or there are reasonable grounds for believing that a person intends to remove a child, or a child is withheld and not returned, in breach of *sections 30 to 35*. It also applies where a person has failed to comply with *sections 31(4), 32(2), 33(2), 34(3) or 35(2)*.
126. In those circumstances an application may be made to the court and the court may by order –
- direct any person who is in a position to do so to produce the child,
  - authorise the removal of the child by an authorised person,
  - require anyone who has information as to the child’s whereabouts to disclose that information to a constable or officer of the court, or
  - authorise a constable to enter any premises specified in the order (if there are reasonable grounds for believing the child is there) and search for the child, using reasonable force if necessary.
127. Authorised persons are any person named by the court, any constable, or any person who is authorised to exercise any power under the order by the adoption agency (*subsections (2) to (4)*).
128. If a person intentionally obstructs an authorised person exercising the power of removal he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
129. A person who is required to disclose information must disclose that information even though it might amount to evidence that he had committed an offence. However, in any criminal proceedings in which the person is charged with an offence (except one which is excluded in *subsection (8)* e.g. offences under section 2 or 5 of the Perjury Act

1911) the prosecution cannot adduce evidence relating to the information provided or ask questions about it, unless it is raised by or on behalf of that person.

130. *Subsection (9)* makes provision for an order made in England and Wales under *section 41* to have effect in Scotland as if it were an order of the courts there.

#### ***Section 42: Child to live with adopters before application***

131. *Section 42* sets out the period a child must live with the applicants before they can apply for an adoption order. Where the child is placed for adoption by an adoption agency (or pursuant to an order of the High Court, or being adopted by his natural parent) an application for an adoption order may not be made unless the child has had his home with one or both of the applicants at all times in the 10 weeks before the application is made (*subsection (2)*). For adoptions by a partner of a parent, the child is required to have had his home with the prospective adopters for a period of at least 6 months before the application may be made (*subsection (3)*). The period is one year in the case of non-agency applications by local authority foster parents and 3 out of the last 5 years in any other non-agency cases, unless the court gives leave for an earlier application (*subsections (4) to (6)*).
132. Furthermore, the court may not make an adoption order unless it is satisfied the agency, or the local authority in non-agency cases, have had sufficient opportunities to see the child with the applicants in their home (*subsection (7)*).

#### ***Section 43: Reports where child placed by agency***

133. The adoption agency which places the child for adoption is responsible for submitting to the court a report on the suitability of the applicants and any other matters relevant to the operation of *section 1* and for assisting the court as it may direct. The report should in particular address the matters in the welfare checklist.

#### ***Section 44: Notice of intention to adopt***

134. *Section 44* provides that an adoption order may not be made in respect of a child in a non-agency case unless the proposed adopters have given notice of intention to adopt to the appropriate local authority (*subsection (2)*). The notice must be given not more than two years or less than three months before the application is made for the adoption order (*subsection (3)*). The ‘appropriate local authority’ is defined in *subsection (9)*. Where the local authority receive a notice of intention to adopt they must investigate (or make arrangements for this to be done by another agency) and are responsible for preparing a report for the court which includes the suitability of the proposed adopters and any other matters relevant to the operation of *section 1* (*subsections (5) and (6)*). Where a person needs leave to apply for an adoption order under *section 42(4) and (5)* he cannot give notice of intention to adopt unless he has the court’s leave to make the adoption application (*subsection (4)*).

#### ***Section 45: Suitability of adopters***

135. *Section 45* amplifies the power in *section 9* in relation to determining the suitability of prospective adopters. *Subsection (1)* enables the appropriate Minister to make regulations prescribing the matters which must be taken into account by an adoption agency in determining the suitability of any persons to adopt a child, or in making any report in respect of the suitability of such persons. The regulations may in particular make provision for ensuring that adoption agencies give proper regard to the need for stability and permanence in the relationship of a couple in determining their suitability to adopt (*subsection (2)*). Regulations made under *subsection (2)* will be subject to the affirmative procedure – see *section 140(3)*.

### **Section 46: Adoption orders**

136. *Section 46* explains the effect of an adoption order. It gives parental responsibility for a child to the adopters. It extinguishes the birth parent's parental responsibility, any order under the Children Act 1989 (which includes residence orders), most orders under the Children (Scotland) Act 1995 or the Children (Northern Ireland) Order 1995 and any duty in an agreement or an order of a court to make maintenance payments (*subsection (2)*). The two sorts of orders under the Children (Scotland) Act 1995 which would remain in force once an adoption order has been made are orders concerning property and exclusion orders which bar a parent from the family home because of the risk he or she poses to the child. An adoption by a partner of a parent does not affect the parental responsibility of the parent of the adopted child or any duties of that parent (*subsection (3)*). *Subsection (5)* provides that an adoption order can be made even if the child to be adopted is already an adopted child.
137. Once an adoption order is made, any liabilities of the birth parent under the Child Support Act 1991 will cease to have effect. A parent for the purposes of that Act is defined as any person who is in law the mother or father of the child (see section 55(1) of that Act). Once a child is adopted the birth parent ceases to be the parent of the child, and the adoptive parents become the parents of the child for the purposes of that Act, therefore on adoption any existing maintenance assessment will cease to have effect and a court order (if any) for the child's maintenance will cease by virtue of *section 46(2)(c)*.
138. *Subsection (6)* provides that before making an adoption order the court must consider whether there should be arrangements for allowing contact. In this respect it may consider any existing or proposed arrangements. The court may make an order under section 8 of the Children Act 1989 of its own motion or there may be an application for such an order before it (see paragraph 94).

### **Section 47: Conditions for making adoption orders**

139. *Section 47* sets out the conditions which must be satisfied before an adoption order can be made where a child has a parent or guardian. One of three conditions must be satisfied. The first condition is that the court is satisfied that each parent consents to the making of the adoption order or has given advance consent to the making of the adoption order under *section 20* (and has not withdrawn that consent) and does not oppose the making of an adoption order or that the parent's consent should be dispensed with. Where the parent has given advance consent to the adoption under *section 20* he may only oppose the making of the adoption order with the leave of the court (*subsection (3)*).
140. The second condition is that the child has been placed for adoption by an adoption agency with the prospective adopters who are applying for the order and either the child was placed for adoption with the consent of each parent under *section 19* and the consent of the mother was given when the child was at least 6 weeks old or under a placement order and no parent opposes the making of the adoption order. A parent may only oppose the making of the order with the leave of the court (*subsection (5)*).
141. *Subsection (7)* provides that the court cannot give leave under *subsection (3) or (5)* for a parent to oppose the making of the adoption order unless it is satisfied that there has been a change in circumstances since the consent was given or the placement order was made. For example, in a case where a placement order was made on the grounds of the child's welfare because of parental drug or alcohol abuse, such a change in circumstances might include proven and successful rehabilitation. Where a mother consented to placement before her baby was 6 weeks old, and did not subsequently confirm that consent, she does not need the leave of the court to oppose the adoption order.
142. The third condition is that the child is free for adoption by virtue of a freeing order made in Scotland or Northern Ireland. The provisions in the Adoption Act 1976 relating to freeing are repealed by the Act, but under the transitional provisions in paragraph 7

of Schedule 4 to the Act, where a child is freed for adoption under section 18 of the Adoption Act 1976 the third condition is deemed to be satisfied.

143. An adoption order may not be made in relation to a person who is, or has been, married or who has attained the age of 19 (*subsections (8) and (9)*).

#### ***Section 48: Restrictions on making adoption orders***

144. *Section 48* provides that a court may not hear an application for an adoption order where a previous application by the same adopters in respect of the same child was refused, unless it appears to the court that there is a change of circumstances or other reason which justifies the second application.

#### ***Section 49: Applications for adoption***

145. *Section 49* provides that an application for an adoption order may be made by a couple or one person but only if it is made under *section 50 or 51* and the condition as to domicile or habitual residence is satisfied. The term “couple” is defined in *section 144*. An application for an adoption order may only be made if the person to be adopted has not reached 18 by the date of the application.

#### ***Section 50: Adoption by couple***

146. Under *section 50* an application for an adoption order by a couple may only be made where both of them have reached the age of 21. However, where one of the couple is the mother or father of a child to be adopted, an application may be made if that person is 18 or over and the other person is 21 or over.

#### ***Section 51: Adoption by one person***

147. *Section 51* provides that an application may be made by one person who is 21 and is not married. In certain circumstances, an adoption application may be made by one person who is married. A partner of a natural parent (which includes a person married to the parent) may adopt the child of that natural parent (*subsection (2)*). This means that the parent is no longer required to make a joint application to adopt his own child with his partner, as is presently the case in respect of step-parent adoptions. The term “partner” is defined in *section 144*.

#### ***Section 52: Parental etc. consent***

148. *Section 52* applies generally to placement and adoption and covers the giving and withdrawal of consent to placement or to adoption (including advance consent to adoption) (*subsection (2)*).
149. Dispensing with a parent’s consent is relevant in relation to the making of placement orders and adoption orders. *Subsection (1)* provides that the court cannot dispense with the consent of any parent to the child being placed for adoption or to the making of an adoption order in respect of the child unless it is satisfied that the parent cannot be found or is incapable of giving consent or that the welfare of the child requires parental consent to be dispensed with. *Section 1* applies to a decision about whether or not to dispense with the consent of a parent to a placement order or an adoption order. The child’s interests are the paramount consideration and the welfare checklist in *section 1(4)* recognises the importance of the child’s relationship with his parents and their ability and willingness to provide him with a secure home and otherwise to meet his needs.
150. Any consent given by the mother of a child to the making of an adoption order is ineffective if it is given less than 6 weeks after the child’s birth (*subsection (3)*).
151. *Subsection (5)* defines what is meant by consent for the purposes of Chapter 3. Consent means consent which is given unconditionally and with full understanding of what is

involved. A person can give consent to adoption without knowing the identity of the persons in whose favour the adoption order will be made. Court rules are to prescribe the form in which consent to placement for adoption under [section 19](#) and advance consent to adoption under [section 20](#) must be given, in a way that allows the parent to understand the position clearly. Withdrawal of those consents must be in the prescribed form or by notice in writing given to the agency. Rules may also prescribe a form of consent that may be used in other circumstances (*subsection (7)*). *Subsection (4)* provides that once an application for an adoption order has been made any consent that has been given to placement for adoption or consent to final adoption may not be withdrawn. If the parent wishes to oppose the adoption order in these circumstances they must seek the court's leave under [section 47\(3\)](#) or [\(5\)](#).

152. *Subsections (9) and (10)* deal with the situation where an unmarried mother gives consent to placement under [section 19](#) and subsequently the child's father acquires parental responsibility for the child, by marriage or a parental responsibility agreement or order under the Children Act 1989. Under *subsection (10)* the father who later acquires parental responsibility is deemed to have consented on the same basis as the mother. Without this authority for the placement would lapse immediately the father acquired parental responsibility. Following his acquisition of parental responsibility, and regardless of *subsection (10)*, the father would be able to withdraw consent in the case of a placement for adoption, which is the same position the mother is in. Where the mother has given advance consent to adoption, the father would be given notice of the application for an adoption order and would be able to oppose, with the leave of the court, the making of the order.

### ***Section 53: Modification of 1989 Act in relation to adoption***

153. Under the Act a child who is authorised to be placed for adoption by a local authority is looked after by the authority whether or not he is actually placed for adoption. The intention in extending the 'looked after' status to children where there is authorisation to place for adoption is to ensure that it is clear that the local authority are to have a continuing responsibility for managing and overseeing the child's future until an adoption order is made, and regularly reviewing their progress. This also applies to a child who has been placed for adoption and is less than 6 weeks old.
154. However, in order to reflect the particular circumstances of placement for adoption, certain provisions in the Children Act 1989 will need to be disapplied where a local authority are authorised to place a child for adoption, whether or not the child is placed. For example in relation to [section 22\(4\)\(b\)](#), [\(c\)](#) and [\(d\)](#) and [\(5\)\(b\)](#), it may not be appropriate for an authority to be under a duty to consult the child's parent or other relatives before taking any decision with respect to the child. This will need to be considered on a case by case basis. Similarly, where a child is placed for adoption with prospective adopters, the authority are to be under an obligation to ascertain and take the views of the prospective adopters with whom the child is placed before making a decision with respect to that child.
155. The regulations may also provide for paragraph 15 of Schedule 2 to the Children Act 1989 to be disapplied. That paragraph provides that a local authority looking after a child must endeavour to promote contact between the child and his parent unless it is not reasonably practicable or consistent with the child's welfare. This duty is not to apply where a local authority are authorised to place a child for adoption. Guidance will be given to local authorities to deal with the issue of contact on a case by case basis and the new provisions in [sections 26 and 27](#) will enable a parent, for example, to make an application for contact with his child.
156. [Section 53\(3\)](#) makes similar provision to disapply the specified sections of the Children Act 1989 where a registered adoption society is authorised to place a child for adoption or has placed a child for adoption who is less than 6 weeks old.

***Section 54: Disclosing information during adoption process***

157. *Section 54* provides that the general regulation making power under *section 9* of the Act may be used to oblige adoption agencies in prescribed circumstances to provide prescribed information to prospective adopters. The intention is to require agencies to provide prospective adopters with the necessary information about a child (for example his needs, his interests, how he relates to other children and adults and his education and health) to help them decide whether to accept a match that the agency suggests with a child.

***Section 55: Revocation of adoptions on legitimisation***

158. *Section 55* provides that an adoption order may, on application, be revoked in circumstances where a child is legitimised by the marriage of his natural parents to each other.

**Disclosure of information in relation to a person's adoption**

159. *Sections 56 to 65* introduce new provisions on the information that adoption agencies must keep in relation to a person's adoption, the information that agencies must disclose to adopted adults on request, the information that courts must release to adopted adults on request and the information that adoption agencies may release to adopted adults, birth parents and others. Many of the provisions on the disclosure of information provide powers for the making of regulations to enable the necessary detail to be set out in secondary legislation.
160. These provisions cover the two types of information held under *section 56*– protected information (see *section 57*) and information which is not protected (see *section 58*).
161. The Act establishes a new system for access to protected information about adopted persons and others involved in their adoption. Currently information about an adopted person is held by three sources: the adopted person's adoption agency, which would normally hold case details and other information; the Registrar General, who holds birth records and basic information about the adopted person's adoption, such as his adoptive name and the names of his adoptive parents; and the court, which will hold reports submitted to it and records of the adoption proceedings. Under these provisions, whilst the Registrar General will retain his duty to maintain the Adopted Children Register and the Adoption Contact Register, the adoption agency will be the main “gateway” for access to this information.
162. Under the new system the adopted adult will have a right to certain information under *section 60*. A person may apply to the appropriate adoption agency as defined in *section 65(1)* for protected information about a person involved in an adoption, such as the adopted person, his birth parents or the adoption social worker. If the protected information is about an adult, *section 61* will apply. If the protected information is about a child or it is not possible to disclose protected information about an adult without also disclosing protected information about a child, *section 62* will apply. Regulations may be made to provide for determinations made by adoption agencies under these provisions to be reviewed by an independent panel constituted under *section 12*.
163. These sections will only apply to adoptions that take place after the Act has been implemented. The arrangements for access to information for those adopted prior to the date of coming into force of *sections 56 to 65* will be provided for by *section 98*.

***Section 56: Information to be kept about a person's adoption***

164. *Section 56* provides a power to make regulations to prescribe the information that an adoption agency must keep in relation to a person's adoption, the form it should take and the way it should be kept. The information kept will be about the adopted person, his birth parents and siblings, his adoptive parents and siblings, other relatives, and social

workers' reports. *Subsection (3)* provides a power to make regulations for the transfer of information between adoption agencies, for example where the original adoption agency is ceasing to operate.

### ***Section 57: Restrictions on disclosure of protected etc. information***

165. *Section 57* makes provision for protected information. Protected information is defined in *subsection (3)*. It is any identifying information (defined in *subsection (4)*) sought by someone other than the person it is about, and any information held under *subsection (2)*. Under *subsections (1) and (2)* protected information must only be disclosed in accordance with these provisions.
166. Identifying information would include names, residential, educational and employment addresses, photographic or audio-visual material, case records and legal and medical information held by adoption agencies. The information held under *subsection (2)* is any information held by an adoption agency, which it has obtained from the Registrar General under *section 79(5)* or any other information that would enable an adopted person to obtain a certified copy of his birth record or any information about an entry in the Adoption Contact Register about the adopted person.
167. *Subsection (5)* provides that the disclosure of protected information where an agreement is reached that includes the adoption agency is not prevented by anything in this group of sections. This is intended to allow agreement between the adoption agency, the adoptive parents and the birth parents for the sharing of protected information. *Subsection (6)* provides a power to prescribe by regulations the circumstances where an adoption agency must disclose protected information to someone other than the adopted person. This power can be exercised to oblige an agency to disclose information or to enable them to do so if certain conditions are satisfied. This would, for example, provide for the disclosure of protected information where it would assist an inquiry under *section 17* of the Act.

### ***Section 58: Disclosure of other information***

168. *Section 58* provides for the disclosure of information held under *section 56* which is not defined as protected information. *Subsection (2)* enables an agency to disclose this information to any person for the purposes of its functions. This could, for example, be background information about the child's progress to be disclosed to his birth family, without disclosing his new identity or his whereabouts. *Subsection (3)* provides that an adoption agency must disclose prescribed information to a prescribed person in prescribed circumstances.

### ***Section 59: Offence***

169. *Section 59* enables regulations to provide that a registered adoption society which discloses information in contravention of *section 57* is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. *Section 14* provides a default power for the appropriate Minister. This could in appropriate cases be used to deal with local authorities that disclose information in contravention of these provisions.

### ***Section 60: Disclosing information to adopted adult***

170. *Section 60* makes provision for the disclosure of information held by adoption agencies and courts to adopted adults. It gives the adopted adult the right under *subsection (2) (a)* to receive any information held by the adoption agency necessary to enable him to obtain a certified copy of his birth record, unless the High Court orders otherwise. Under *subsection (3)*, the High Court may allow the adoption agency to withhold this information if it believes that the circumstances are exceptional. An example of when the High Court may exercise this power is where it is considered that disclosure would lead to a serious crime being committed. *Subsection (2)*

(b) allows the adopted adult to receive prescribed information his adoptive parents received under [section 54](#). Under *subsection (4)* the adopted person has the right to request from the court a copy of a prescribed document or prescribed order relating to his adoption. The documents will be prescribed in rules made by the Lord Chancellor. Under *subsection (5)* the documents which the adopted person may request from the court will not contain protected information.

### ***Section 61: Disclosing protected information about adults***

171. [Section 61](#) provides for the process that an adoption agency must undertake when an application is made for the disclosure of protected information about an adult. *Subsection (1)* provides that this process applies where any person applies to the appropriate adoption agency (defined at [section 65\(1\)](#)) for protected information and none of that protected information is about a person who is a child at the time that the application is made.
172. *Subsection (2)* provides that the agency is not obliged to process an application for disclosure of information unless it considers that it is appropriate to do so. Where an agency does consider that it is appropriate to proceed with the application, *subsection (3)* obliges it to take all reasonable steps to obtain the views of the person the information is about as to the disclosure of that information.
173. *Subsection (4)* gives the agency discretion to proceed with the application to disclose the information if it considers it appropriate to do so. *Subsection (5)* provides that in making a decision as to whether or not it is appropriate to proceed with the application or to disclose the information, the agency must consider the welfare of the adopted person, any views that it has obtained under *subsection (3)*, any matters that may be prescribed in regulations and all the other circumstances of the case.
174. Under *subsection (6)*, this section does not apply to a request for information under [section 60\(2\)](#), where a request is made by an adopted adult for either the information needed to obtain a certified copy of his birth record or the information given by an agency to his adopters under [section 54](#). Applications by an adopted person for the disclosure of all other protected information fall within this section or [section 62](#). [Section 62](#) does not apply to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of [section 57\(6\)](#).

### ***Section 62: Disclosing protected information about children***

175. [Section 62](#) provides for the process that an adoption agency must undertake when an application for disclosure of protected information is made to it, and any of that information is about a person who is a child at the time that the application is made. This is set out in *subsection (1)*.
176. *Subsection (2)* provides that the agency is not obliged to proceed with an application for disclosure of information unless it considers that it is appropriate to do so. If the agency decides to proceed with the application, *subsection (3)* provides that where the information relates to a child, the agency must take all reasonable steps to obtain the views of any parent or guardian of the child as to the disclosure of the information. If the agency considers it appropriate to do so, it must also seek the child's views as to the disclosure of the information. In doing so the agency must take into account the child's age and understanding, including the ability to understand the consequences of what is being asked, and all the other facts of the case.
177. Where the agency decides to proceed with the application, *subsection (4)* provides that where the information relates to a person who has attained the age of 18 at the time that the application is made, the agency must take all reasonable steps to obtain his views as to the disclosure of the information.

178. *Subsection (5)* gives the agency discretion to disclose the information if it considers it appropriate to do so. This discretion must be exercised having regard to *subsections (6) and (7)*. *Subsection (6)* provides that in deciding whether or not to proceed with an application for the disclosure of information, or to disclose that information, where any of it relates to a person who at the time the application is made is an adopted child, that child's welfare must be the paramount consideration. In the case of any other child the agency must have particular regard to his welfare. *Subsection (7)* provides that in deciding whether or not to proceed with an application to disclose information, or to disclose any information, the agency must consider the welfare of the adopted person (where they are not an adopted child), any views obtained under *subsections (3) and (4)*, any prescribed matters and all the other circumstances of the case.
179. Under *subsection (8)* (as under *section 61(6)* - see paragraph 174) this section does not apply to a request for information under *section 60(2)*, where a request is made by an adopted adult for either the information needed to obtain a certified copy of his birth record or the information given by an agency to his adopters under *section 54*. Applications by an adopted person for the disclosure of all other protected information fall within this section or *section 61*. *Section 62* does not apply to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of *section 57(6)*.

### ***Section 63: Counselling***

180. *Section 63* makes provision in respect of counselling for those seeking information under these sections, those considering consenting to or objecting to the disclosure of information, and those considering an agreement for the sharing of protected information under *section 57(5)*. *Subsection (1)* provides a power to make regulations to require adoption agencies to provide information about access to counselling services and *subsection (2)* provides for regulations to require adoption agencies to make arrangements to secure the provision of counselling to those seeking information in prescribed circumstances. The intention is to make counselling available to an adopted person, if he wishes to access it, where he applies to the agency for the disclosure of protected information about another person. *Subsection (3)* provides a power to make regulations to enable adoption agencies to disclose the information that is needed by the counselling agency for the purposes of providing the counselling. Where the counselling is to be provided outside the United Kingdom, the adoption agency may require the person who is to receive the counselling to pay a prescribed fee.

### ***Section 64: Other provision to be made by regulations***

181. *Section 64* provides for regulation making powers which will provide for the balancing of the rights of individuals, and the operation of the new duties for adoption agencies and the Registrar General under *sections 56 to 65*. *Subsection (1)* provides a power to make regulations concerning the operation by adoption agencies of their functions under *sections 56 to 65*, and the manner in which information may be received by adoption agencies.
182. *Subsection (2)* provides a power to make regulations for the recording of agreements made by virtue of *section 57(5)* and the information to be provided on an application for the disclosure of information under these provisions.
183. *Subsection (3)* provides a power to make regulations requiring adoption agencies to give prescribed persons prescribed information about their rights or opportunities to obtain information or to give their views as to its disclosure. For example, that adoption agencies must inform the birth parents and adoptive parents at the time of the placement of the child of the rights for individuals to request protected information.
184. Under *subsection (3)(b)*, regulations may be made to require adoption agencies to seek prescribed information from, or give prescribed information to, the Registrar General. Adoption agencies will be required to obtain information held on the adopted

person's birth record from the Registrar General, if the agency receives a request from the adopted person for that information.

185. *Subsection (4)* provides a power to make regulations for the Registrar General to be required to disclose to any person any information which he needs to help him contact the appropriate adoption agency (defined in *section 65(1)*) and to disclose to the appropriate adoption agency information required by that agency about an entry relating to the adopted person on the Adoption Contact Register. This may assist the adoption agency in ascertaining the wishes of an adopted person or of a particular relative in relation to contact with the other party.
186. *Subsection (5)* provides a power to make regulations for the payment of fees to the adoption agency by anybody who applies to the agency under *sections 60, 61 or 62* for information. The exception is that the adopted person cannot be charged in respect of any information disclosed to him under this group of sections about any person who but for his adoption would be related to him by blood, including half-blood, or marriage. *Subsection (6)* provides a power to make regulations for the payment of a fee by an adoption agency to the Registrar General for his disclosure of information from the Adoption Contact Register.

***Section 65: Sections 56 to 65: Interpretation***

187. *Section 65(1)* defines some of the terms used in *sections 56 to 65*. *Subsections (2) (a) and (b)* set out the circumstances in which Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland are to make regulations. *Subsection (3)* enables Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland, when they make regulations under *section 63(2)*, to make supplementary, transitional and other provision. *Subsection (4)* provides that the Chancellor of the Exchequer must approve any regulations that set out a fee for payment by an adoption agency to the Registrar General for his disclosure of information from the Adoption Contact Register. *Subsection (5)* provides that the Registrar General must approve any regulations about the way in which applications to him for the disclosure of information are made.