

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 -Miscellaneous and Final Provisions

Chapter 2 - Final Provisions

Section 140: Orders, rules and regulations

338. *Section 140* provides that all subordinate legislation such as regulations, orders and rules made by the Lord Chancellor, the Secretary of State, the Scottish Ministers, the Assembly or the Registrar General under the Act is to be made by statutory instrument. A default order made under *section 14* and a commencement order made under *section 148* is not to be subject to any parliamentary scrutiny. Any statutory instruments made under sections *92(6), 94 or 122(6)* (respectively amendments to list of prohibited steps, restrictions on reports and amendments to restrictions on advertising in light of advances in technology) or other instruments which amend primary legislation are subject to the affirmative procedure. In addition, regulations made under *section 9* which include 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 (as set out in *section 45(2)*) will be subject to the affirmative resolution procedure
339. Specific provision is made in section 86 to provide that the statutory instrument containing the first set of regulations is to be subject to the affirmative resolution procedure and for *section 140(2)* not to apply to that instrument. *Section 140(2)*, and therefore the negative resolution procedure, will apply to subsequent statutory instruments containing regulations to be made under *section 86*.
340. All other subordinate legislation except an Order in Council or subordinate legislation made by Scottish Ministers, the National Assembly for Wales and the Northern Ireland Assembly will be subject to the negative resolution procedure. An Order in Council made under *section 125* which relates to the Adoption and Children Act Register will, by virtue of *section 131*, be subject to the affirmative resolution procedure in each of the countries to which the Register is to apply. An Order in Council under *section 137* is subject to the negative resolution procedure in line with the provisions in the British Nationality Act. Subordinate legislation made by the Scottish Ministers, the National Assembly for Wales and the Northern Ireland Assembly will be subject to the scrutiny of those administrations. Where the subordinate legislation is made jointly by the Secretary of State and the Assembly it will be subject to parliamentary scrutiny in the Westminster parliament.

Section 141: Rules of procedure

341. *Section 141* enables the Lord Chancellor to make rules to deal generally with all matters of procedure. This section provides in particular for rules to say where and to whom notice is given of hearings for placement and adoption orders. *Subsection (3)* provides

that this notice must state the date and place of the application and that the person to whom notice is given need not attend the hearing, unless they wish to attend or the court requires it.

342. *Subsection (4)* makes provision as to whom that notice must be given. For applications for placement and adoption orders this is every person who can be found whose consent is necessary or could be dispensed with under *sections 21 or 47*. In these cases rules may prescribe that where such a person cannot be found another relative must be given such notice.
343. For applications to vary or revoke a placement order, notice should be given to each party whose consent to the placement order was necessary (or would have been required but for the dispensation provisions); for applications for an adoption order where advance consent has been given, notice should be given to each parent or guardian unless they have stated that they do not wish to be provided with such notice.

Section 144: General interpretation, etc.

344. *Section 144* provides general interpretation. One of the important definitions in this section is the definition of “appropriate Minister.” This is defined as in relation to England, Scotland or Northern Ireland, the Secretary of State and in relation to Wales the National Assembly for Wales. *Subsection (4)* provides a definition of a “couple”. This definition applies solely for the purposes of the Act and does not impact on other legislation. A couple means a married couple or two people, whether of different sexes or of the same sex, living as partners in an enduring family relationship. The latter does not include two people where one person is the other’s parent, grandparent, sister, brother, aunt or uncle (*subsection (5)*). *Subsection (6)* provides that the relationships set out in *subsection (5)* include relationships of the full or half blood and also include the relationship of an adoptive parent with his adopted child, or his former adopted child. The wording at the end of *subsection (6)* makes clear that adoptive relationships other than those set out in *subsection (6)(b)* are not included in the list at *subsection (5)*. *Subsection (7)* provides a definition of “partner” for the purposes of this Act. A person is a partner of the child’s parent if the person and the parent are a couple but the person is not the child’s parent.

Section 145: Devolution: Wales

345. *Section 145* provides that the references to the Adoption Act 1976 and the Children Act 1989 in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 are to be treated as referring to those Acts as amended by this Act. *Subsection (3)* omits the reference to section 9 of the Adoption Act 1976 from the National Assembly for Wales (Transfer of Functions) Order 1999. The entry is not needed because of the amendment to section 9 of the Adoption Act 1976 made by paragraph 4 of Schedule 4 to this Act. *Subsection (4)* provides that the functions under sections 9 and 9A of the Adoption Act 1976 exercisable by the National Assembly for Wales are to be treated as if they were made exercisable by an Order in Council under section 22 of the Government of Wales Act. This ensures that the appropriate parliamentary procedures in the National Assembly for Wales are applied to regulations made by the National Assembly for Wales under sections 9 and 9A of the Adoption Act 1976.