



# Adoption and Children Act 2002

## 2002 CHAPTER 38

### PART 1

#### ADOPTION

### CHAPTER 3

#### PLACEMENT FOR ADOPTION AND ADOPTION ORDERS

##### *Placement of children by adoption agency for adoption*

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

- (1) An adoption agency may—
  - (a) place a child for adoption with prospective adopters, or
  - (b) where it has placed a child with any persons (whether under this Part or not), leave the child with them as prospective adopters,but, except in the case of a child who is less than six weeks old, may only do so under section 19 or a placement order.
- (2) An adoption agency may only place a child for adoption with prospective adopters if the agency is satisfied that the child ought to be placed for adoption.
- (3) A child who is placed or authorised to be placed for adoption with prospective adopters by a local authority is looked after by the authority.
- (4) If an application for an adoption order has been made by any persons in respect of a child and has not been disposed of—
  - (a) an adoption agency which placed the child with those persons may leave the child with them until the application is disposed of, but
  - (b) apart from that, the child may not be placed for adoption with any prospective adopters.

*Status: Point in time view as at 02/11/2010.*

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“Adoption order” includes a Scottish or Northern Irish adoption order.

- (5) References in this Act (apart from this section) to an adoption agency placing a child for adoption—
- (a) are to its placing a child for adoption with prospective adopters, and
  - (b) include, where it has placed a child with any persons (whether under this Act or not), leaving the child with them as prospective adopters;
- and references in this Act (apart from this section) to a child who is placed for adoption by an adoption agency are to be interpreted accordingly.
- (6) References in this Chapter to an adoption agency being, or not being, authorised to place a child for adoption are to the agency being or (as the case may be) not being authorised to do so under section 19 or a placement order.
- (7) This section is subject to sections 30 to 35 (removal of children placed by adoption agencies).

**Modifications etc. (not altering text)**

- C1** [S. 18\(4\)](#) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(b)**, 52, 55

**Commencement Information**

- II** [S. 18](#) in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 19 Placing children with parental consent

- (1) Where an adoption agency is satisfied that each parent or guardian of a child has consented to the child—
- (a) being placed for adoption with prospective adopters identified in the consent, or
  - (b) being placed for adoption with any prospective adopters who may be chosen by the agency,
- and has not withdrawn the consent, the agency is authorised to place the child for adoption accordingly.
- (2) Consent to a child being placed for adoption with prospective adopters identified in the consent may be combined with consent to the child subsequently being placed for adoption with any prospective adopters who may be chosen by the agency in circumstances where the child is removed from or returned by the identified prospective adopters.
- (3) Subsection (1) does not apply where—
- (a) an application has been made on which a care order might be made and the application has not been disposed of, or
  - (b) a care order or placement order has been made after the consent was given.
- (4) References in this Act to a child placed for adoption under this section include a child who was placed under this section with prospective adopters and continues to be placed with them, whether or not consent to the placement has been withdrawn.

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(5) This section is subject to section 52 (parental etc. consent).

**Modifications etc. (not altering text)**

**C2** S. 19 restricted by 1978 c. 28, s. 16(3D) (as inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), s. 148(1), [Sch. 3 para. 23](#) (with [Sch. 4 paras. 6-8](#)); S.S.I. 2005/643, art. 2(c))

**Commencement Information**

**I2** S. 19 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 20 Advance consent to adoption

(1) A parent or guardian of a child who consents to the child being placed for adoption by an adoption agency under section 19 may, at the same or any subsequent time, consent to the making of a future adoption order.

(2) Consent under this section—

- (a) where the parent or guardian has consented to the child being placed for adoption with prospective adopters identified in the consent, may be consent to adoption by them, or
- (b) may be consent to adoption by any prospective adopters who may be chosen by the agency.

(3) A person may withdraw any consent given under this section.

(4) A person who gives consent under this section may, at the same or any subsequent time, by notice given to the adoption agency—

- (a) state that he does not wish to be informed of any application for an adoption order, or
- (b) withdraw such a statement.

(5) A notice under subsection (4) has effect from the time when it is received by the adoption agency but has no effect if the person concerned has withdrawn his consent.

(6) This section is subject to section 52 (parental etc. consent).

**Modifications etc. (not altering text)**

**C3** S. 20 restricted by 1978 c. 28, s. 16(3D) (as inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), s. 148(1), [Sch. 3 para. 23](#) (with [Sch. 4 paras. 6-8](#)); S.S.I. 2005/643, art. 2(c))

**Commencement Information**

**I3** S. 20 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 21 Placement orders

(1) A placement order 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.

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- (2) The court may not make a placement order in respect of a child unless—
- (a) the child is subject to a care order,
  - (b) the court is satisfied that the conditions in section 31(2) of the 1989 Act (conditions for making a care order) are met, or
  - (c) the child has no parent or guardian.
- (3) The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied—
- (a) that the parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn the consent, or
  - (b) that the parent’s or guardian’s consent should be dispensed with.
- This subsection is subject to section 52 (parental etc. consent).
- (4) A placement order continues in force until—
- (a) it is revoked under section 24,
  - (b) an adoption order is made in respect of the child, or
  - (c) the child marries [<sup>F1</sup>, forms a civil partnership] or attains the age of 18 years.
- “Adoption order” includes a Scottish or Northern Irish adoption order.

#### Textual Amendments

- F1** Words in s. 21(4)(c) inserted (30.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 79(2)**, 263(2); S.I. 2005/3175, art. 2(9)

#### Modifications etc. (not altering text)

- C4** S. 21 restricted by 1978 c. 28, s. 16(3D) (as inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), s. 148(1), **Sch. 3 para. 23** (with [Sch. 4 paras. 6-8](#)); S.I. 2005/643, art. 2(c))
- C5** S. 21(4)(b) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(c)**, 52, 55

#### Commencement Information

- I4** S. 21 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 22 Applications for placement orders

- (1) A local authority must apply to the court for a placement order in respect of a child if—
- (a) the child is placed for adoption by them or is being provided with accommodation by them,
  - (b) no adoption agency is authorised to place the child for adoption,
  - (c) the child has no parent or guardian or the authority consider that the conditions in section 31(2) of the 1989 Act are met, and
  - (d) the authority are satisfied that the child ought to be placed for adoption.
- (2) If—
- (a) an application has been made (and has not been disposed of) on which a care order might be made in respect of a child, or

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- (b) a child is subject to a care order and the appropriate local authority are not authorised to place the child for adoption,  
the appropriate local authority must apply to the court for a placement order if they are satisfied that the child ought to be placed for adoption.
- (3) If—
- (a) a child is subject to a care order, and
- (b) the appropriate local authority are authorised to place the child for adoption under section 19,  
the authority may apply to the court for a placement order.
- (4) If a local authority—
- (a) are under a duty to apply to the court for a placement order in respect of a child, or
- (b) have applied for a placement order in respect of a child and the application has not been disposed of,  
the child is looked after by the authority.
- (5) Subsections (1) to (3) do not apply in respect of a child—
- (a) if any persons have given notice of intention to adopt, unless the period of four months beginning with the giving of the notice has expired without them applying for an adoption order or their application for such an order has been withdrawn or refused, or
- (b) if an application for an adoption order has been made and has not been disposed of.
- “Adoption order” includes a Scottish or Northern Irish adoption order.
- (6) Where—
- (a) an application for a placement order in respect of a child has been made and has not been disposed of, and
- (b) no interim care order is in force,  
the court may give any directions it considers appropriate for the medical or psychiatric examination or other assessment of the child; but a child who is of sufficient understanding to make an informed decision may refuse to submit to the examination or other assessment.
- (7) The appropriate local authority—
- (a) in relation to a care order, is the local authority in whose care the child is placed by the order, and
- (b) in relation to an application on which a care order might be made, is the local authority which makes the application.

**Modifications etc. (not altering text)**

- C6** S. 22(5)(a)(b) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(d)**, 52, 55

**Commencement Information**

- I5** S. 22 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

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## 23 Varying placement orders

- (1) The court may vary a placement order so as to substitute another local authority for the local authority authorised by the order to place the child for adoption.
- (2) The variation may only be made on the joint application of both authorities.

### Commencement Information

- I6** [S. 23](#) in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 24 Revoking placement orders

- (1) The court may revoke a placement order on the application of any person.
- (2) But an application may not be made by a person other than the child or the local authority authorised by the order to place the child for adoption unless—
  - (a) the court has given leave to apply, and
  - (b) the child is not placed for adoption by the authority.
- (3) The court cannot give leave under subsection (2)(a) unless satisfied that there has been a change in circumstances since the order was made.
- (4) If the court determines, on an application for an adoption order, not to make the order, it may revoke any placement order in respect of the child.
- (5) Where—
  - (a) an application for the revocation of a placement order has been made and has not been disposed of, and
  - (b) the child is not placed for adoption by the authority,
 the child may not without the court’s leave be placed for adoption under the order.

### Modifications etc. (not altering text)

- C7** [S. 24\(4\)](#) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), [regs. 1\(1\)](#), [11\(1\)\(e\)](#), 52, 55

### Commencement Information

- I7** [S. 24](#) in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 25 Parental responsibility

- (1) This section applies while—
  - (a) a child is placed for adoption under section 19 or an adoption agency is authorised to place a child for adoption under that section, or
  - (b) a placement order is in force in respect of a child.
- (2) Parental responsibility for the child is given to the agency concerned.

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- (3) While the child is placed with prospective adopters, parental responsibility is given to them.
- (4) The agency may determine that the parental responsibility of any parent or guardian, or of prospective adopters, is to be restricted to the extent specified in the determination.

**Modifications etc. (not altering text)**

- C8** S. 25 extended (S.) (with modifications) by 1978 c. 28, s. 53B (as inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), s. 148(1), [Sch. 3 para. 30](#) (with [Sch. 4 paras. 6-8](#)); S.S.I. 2005/643, art. 2(c))
- C9** S. 25 extended (S.) (with modifications) (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), [ss. 78, 121\(2\)](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

**Commencement Information**

- I8** S. 25 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 26 Contact

- (1) On an adoption agency being authorised to place a child for adoption, or placing a child for adoption who is less than six weeks old, any provision for contact under the 1989 Act ceases to have effect [<sup>F2</sup>and any contact activity direction relating to contact with the child is discharged].
- (2) While an adoption agency is so authorised or a child is placed for adoption—
  - (a) no application may be made for any provision for contact under that Act, but
  - (b) the court may make an order under this section 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 the person named in the order and the child otherwise to have contact with each other.
- (3) An application for an order under this section may be made by—
  - (a) the child or the agency,
  - (b) any parent, guardian or relative,
  - (c) any person in whose favour there was provision for contact under the 1989 Act which ceased to have effect by virtue of subsection (1),
  - (d) if a residence order was in force immediately before the adoption agency was authorised to place the child for adoption or (as the case may be) placed the child for adoption at a time when he was less than six weeks old, the person in whose favour the order was made,
  - (e) if a person had care of the child immediately before that time by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, that person,
  - (f) any person who has obtained the court's leave to make the application.
- (4) When making a placement order, the court may on its own initiative make an order under this section.

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- (5) This section does not prevent an application for a contact order under section 8 of the 1989 Act being made where the application is to be heard together with an application for an adoption order in respect of the child.
- (6) In this section, [<sup>F3</sup>“contact activity direction” has the meaning given by section 11A of the 1989 Act and] “provision for contact under the 1989 Act” means a contact order under section 8 of that Act or an order under section 34 of that Act (parental contact with children in care).

#### Textual Amendments

- F2** Words in s. 26(1) inserted (8.12.2008) by [Children and Adoption Act 2006 \(c. 20\), s. 17\(2\), Sch. 2 para. 14\(2\)](#); S.I. 2008/2870, art. 2(2)(e)
- F3** Words in s. 26(6) inserted (8.12.2008) by [Children and Adoption Act 2006 \(c. 20\), s. 17\(2\), Sch. 2 para. 14\(3\)](#); S.I. 2008/2870, art. 2(2)(e)

#### Modifications etc. (not altering text)

- C10** S. 26 restricted by 1986 c. 55, s. 2(2B) (as inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\), s. 148\(1\), Sch. 3 para. 48](#) (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(o))

#### Commencement Information

- I9** S. 26 in force at 30.12.2005 by [S.I. 2005/2213, art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 27 Contact: supplementary

- (1) An order under section 26—
- has effect while the adoption agency is authorised to place the child for adoption or the child is placed for adoption, but
  - may be varied or revoked by the court on an application by the child, the agency or a person named in the order.
- (2) The agency may refuse to allow the contact that would otherwise be required by virtue of an order under that section if—
- it is satisfied that it is necessary to do so in order to safeguard or promote the child’s welfare, and
  - the refusal is decided upon as a matter of urgency and does not last for more than seven days.
- (3) Regulations may make provision as to—
- the steps to be taken by an agency which has exercised its power under subsection (2),
  - the circumstances in which, and conditions subject to which, the terms of any order under section 26 may be departed from by agreement between the agency and any person for whose contact with the child the order provides,
  - notification by an agency of any variation or suspension of arrangements made (otherwise than under an order under that section) with a view to allowing any person contact with the child.
- (4) Before making a placement order the court must—



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- (a) consider the arrangements which the adoption agency has made, or proposes to make, for allowing any person contact with the child, and
  - (b) invite the parties to the proceedings to comment on those arrangements.
- (5) An order under section 26 may provide for contact on any conditions the court considers appropriate.

#### Commencement Information

- I10** S. 27(1)(2)(4)(5) in force at 30.12.2005 by S.I. 2005/2213, **art. 2(c)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)
- I11** S. 27(3) in force at 7.2.2004 for W. by S.I. 2004/252, **art. 2(b)**
- I12** S. 27(3) in force at 7.12.2004 for E. by S.I. 2004/3203, **art. 2(1)(f)**

## 28 Further consequences of placement

- (1) Where a child is placed for adoption under section 19 or an adoption agency is authorised to place a child for adoption under that section—
- (a) a parent or guardian of the child may not apply for a residence order unless an application for an adoption order has been made and the parent or guardian has obtained the court's leave under subsection (3) or (5) of section 47,
  - (b) if 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 court's leave under subsection (3) or (5) of that section.
- (2) Where—
- (a) a child is placed for adoption under section 19 or an adoption agency is authorised to place a child for adoption under that section, or
  - (b) a placement order is in force in respect of a child,
- then (whether or not the child is in England and Wales) a person may not do either of the following things, unless the court gives leave or each parent or guardian of the child gives written consent.
- (3) Those things are—
- (a) causing the child to be known by a new surname, or
  - (b) removing the child from the United Kingdom.
- (4) Subsection (3) does not prevent the removal of a child from the United Kingdom for a period of less than one month by a person who provides the child's home.

#### Modifications etc. (not altering text)

- C11** S. 28(1) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(f)**, 52, 55
- C12** S. 28(2) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **52**, 53
- C13** S. 28(2)-(4) extended (S.) (with modifications) by 1978 c. 28, s. 53B (as inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), s. 148(1), **Sch. 3 para. 30** (with [Sch. 4 paras. 6-8](#)); S.S.I. 2005/643, art. 2(c))
- C14** S. 28(2) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **6**, 7

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**C15** S. 28(2)-(4) extended (S.) (with modifications) (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\), ss. 78, 121\(2\)](#); [S.S.I. 2009/267](#), arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

**Commencement Information**

**I13** S. 28 in force at 30.12.2005 by [S.I. 2005/2213](#), art. 2(c) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

**29 Further consequences of placement orders**

- (1) Where a placement order is made in respect of a child and either—
  - (a) the child is subject to a care order, or
  - (b) the court at the same time makes a care order in respect of the child, the care order does not have effect at any time when the placement order is in force.
- (2) On the making of a placement order in respect of a child, any order mentioned in section 8(1) of the 1989 Act, and any supervision order in respect of the child, ceases to have effect.
- (3) Where a placement order is in force—
  - (a) no prohibited steps order, residence order or specific issue order, and
  - (b) no supervision order or child assessment order, may be made in respect of the child.
- (4) Subsection (3)(a) does not apply in respect of a residence order if—
  - (a) an application for an adoption order has been made in respect of the child, and
  - (b) the residence order is applied for by a parent or guardian who has obtained the court’s leave under subsection (3) or (5) of section 47 or by any other person who has obtained the court’s leave under this subsection.
- (5) Where a placement order is in force, no special guardianship order may be made in respect of the child unless—
  - (a) an application has been made for an adoption order, and
  - (b) the person applying for the special guardianship order has obtained the court’s leave under this subsection or, if he is a guardian of the child, has obtained the court’s leave under section 47(5).
- (6) Section 14A(7) of the 1989 Act applies in respect of an application for a special guardianship order for which leave has been given as mentioned in subsection (5)(b) with the omission of the words “the beginning of the period of three months ending with”.
- (7) Where a placement order is in force—
  - (a) section 14C(1)(b) of the 1989 Act (special guardianship: parental responsibility) has effect subject to any determination under section 25(4) of this Act,
  - (b) section 14C(3) and (4) of the 1989 Act (special guardianship: removal of child from UK etc.) does not apply.

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#### **Modifications etc. (not altering text)**

- C16** S. 29(4)(a) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(g)**, 52, 55
- C17** S. 29(5)(a) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(g)**, 52, 55

#### **Commencement Information**

- I14** S. 29 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

### *Removal of children who are or may be placed by adoption agencies*

## **30 General prohibitions on removal**

### (1) Where—

- (a) a child is placed for adoption by an adoption agency under section 19, or
- (b) a child is placed for adoption by an adoption agency and either the child is less than six weeks old or the agency has at no time been authorised to place the child for adoption,

a person (other than the agency) must not remove the child from the prospective adopters.

### (2) Where—

- (a) a child who is not for the time being placed for adoption is being provided with accommodation by a local authority, and
- (b) the authority have applied to the court for a placement order and the application has not been disposed of,

only a person who has the court's leave (or the authority) may remove the child from the accommodation.

### (3) Where subsection (2) does not apply, but—

- (a) a child who is not for the time being placed for adoption is being provided with accommodation by an adoption agency, and
- (b) the agency is authorised to place the child for adoption under section 19 or would be so authorised if any consent to placement under that section had not been withdrawn,

a person (other than the agency) must not remove the child from the accommodation.

### (4) This section is subject to sections 31 to 33 but those sections do not apply if the child is subject to a care order.

### (5) This group of sections (that is, this section and those sections) apply whether or not the child in question is in England and Wales.

### (6) This group of sections does not affect the exercise by any local authority or other person of any power conferred by any enactment, other than section 20(8) of the 1989 Act (removal of children from local authority accommodation).

### (7) This group of sections does not prevent the removal of a child who is arrested.

*Status: Point in time view as at 02/11/2010.*

*Changes to legislation: Adoption and Children Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) A person who removes a child in contravention of this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

**Commencement Information**

**I15** S. 30 in force at 30.12.2005 by S.I. 2005/2213, art. 2(c) (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

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

- (1) Subsection (2) applies where—
- (a) a child who is not for the time being placed for adoption is being provided with accommodation by an adoption agency, and
  - (b) the agency would be authorised to place the child for adoption under section 19 if consent to placement under that section had not been withdrawn.
- (2) If any parent or guardian of the child informs the agency that he wishes the child to be returned to him, the agency must return the child to him within the period of seven days beginning with the request unless an application is, or has been, made for a placement order and the application has not been disposed of.
- (3) Subsection (4) applies where—
- (a) a child is placed for adoption by an adoption agency and either the child is less than six weeks old or the agency has at no time been authorised to place the child for adoption, and
  - (b) any parent or guardian of the child informs the agency that he wishes the child to be returned to him,
- unless an application is, or has been, made for a placement order and the application has not been disposed of.
- (4) The agency must give notice of the parent's or guardian's wish to the prospective adopters who must return the child to the agency within the period of seven days beginning with the day on which the notice is given.
- (5) A prospective adopter who fails to comply with subsection (4) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (6) As soon as a child is returned to an adoption agency under subsection (4), the agency must return the child to the parent or guardian in question.

**Commencement Information**

**I16** S. 31 in force at 30.12.2005 by S.I. 2005/2213, art. 2(c) (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

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

- (1) This section applies where—
- (a) a child is placed for adoption by an adoption agency under section 19, and

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- (b) consent to placement under that section has been withdrawn, unless an application is, or has been, made for a placement order and the application has not been disposed of.
- (2) If a parent or guardian of the child informs the agency that he wishes the child to be returned to him—
- (a) the agency must give notice of the parent’s or guardian’s wish to the prospective adopters, and
- (b) the prospective adopters must return the child to the agency within the period of 14 days beginning with the day on which the notice is given.
- (3) A prospective adopter who fails to comply with subsection (2)(b) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (4) As soon as a child is returned to an adoption agency under this section, the agency must return the child to the parent or guardian in question.
- (5) Where a notice under subsection (2) is given, but—
- (a) before the notice was given, an application for an adoption order (including a Scottish or Northern Irish adoption order), special guardianship order or residence order, or for leave to apply for a special guardianship order or residence order, was made in respect of the child, and
- (b) the application (and, in a case where leave is given on an application to apply for a special guardianship order or residence order, the application for the order) has not been disposed of,
- the prospective adopters are not required by virtue of the notice to return the child to the agency unless the court so orders.

**Modifications etc. (not altering text)**

**C18** S. 32(5) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(h)**, 52, 55

**Commencement Information**

**I17** S. 32 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

**33 Recovery by parent etc. where child placed and placement order refused**

- (1) This section applies where—
- (a) a child is placed for adoption by a local authority under section 19,
- (b) the authority have applied for a placement order and the application has been refused, and
- (c) any parent or guardian of the child informs the authority that he wishes the child to be returned to him.
- (2) The prospective adopters must return the child to the authority on a date determined by the court.

*Status: Point in time view as at 02/11/2010.*

*Changes to legislation: Adoption and Children Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A prospective adopter who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (4) As soon as a child is returned to the authority, they must return the child to the parent or guardian in question.

#### **Commencement Information**

**I18** S. 33 in force at 30.12.2005 by S.I. 2005/2213, art. 2(c) (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

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

- (1) Where a placement order in respect of a child—
  - (a) is in force, or
  - (b) has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by the local authority,
 a person (other than the local authority) may not remove the child from the prospective adopters or from accommodation provided by the authority.
- (2) A person who removes a child in contravention of subsection (1) is guilty of an offence.
- (3) Where a court revoking a placement order in respect of a child determines that the child is not to remain with any former prospective adopters with whom the child is placed, they must return the child to the local authority within the period determined by the court for the purpose; and a person who fails to do so is guilty of an offence.
- (4) Where a court revoking a placement order in respect of a child determines that the child is to be returned to a parent or guardian, the local authority must return the child to the parent or guardian as soon as the child is returned to the authority or, where the child is in accommodation provided by the authority, at once.
- (5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (6) This section does not affect the exercise by any local authority or other person of a power conferred by any enactment, other than section 20(8) of the 1989 Act.
- (7) This section does not prevent the removal of a child who is arrested.
- (8) This section applies whether or not the child in question is in England and Wales.

#### **Commencement Information**

**I19** S. 34 in force at 30.12.2005 by S.I. 2005/2213, art. 2(c) (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

*Status: Point in time view as at 02/11/2010.*

*Changes to legislation: Adoption and Children Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### 35 Return of child in other cases

- (1) Where a child is placed for adoption by an adoption agency and the prospective adopters give notice to the agency of their wish to return the child, the agency must—
  - (a) receive the child from the prospective adopters before the end of the period of seven days beginning with the giving of the notice, and
  - (b) give notice to any parent or guardian of the child of the prospective adopters' wish to return the child.
- (2) Where a child is placed for adoption by an adoption agency, and the agency—
  - (a) is of the opinion that the child should not remain with the prospective adopters, and
  - (b) gives notice to them of its opinion,the prospective adopters must, not later than the end of the period of seven days beginning with the giving of the notice, return the child to the agency.
- (3) If the agency gives notice under subsection (2)(b), it must give notice to any parent or guardian of the child of the obligation to return the child to the agency.
- (4) A prospective adopter who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (5) Where—
  - (a) an adoption agency gives notice under subsection (2) in respect of a child,
  - (b) before the notice was given, an application for an adoption order (including a Scottish or Northern Irish adoption order), special guardianship order or residence order, or for leave to apply for a special guardianship order or residence order, was made in respect of the child, and
  - (c) the application (and, in a case where leave is given on an application to apply for a special guardianship order or residence order, the application for the order) has not been disposed of,prospective adopters are not required by virtue of the notice to return the child to the agency unless the court so orders.
- (6) This section applies whether or not the child in question is in England and Wales.

#### Modifications etc. (not altering text)

- C19** S. 35 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 6, 8
- C20** S. 35(5) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 11(2), 52, 55

#### Commencement Information

- I20** S. 35 in force at 30.12.2005 by [S.I. 2005/2213](#), art. 2(c) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

*Status: Point in time view as at 02/11/2010.*

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### *Removal of children in non-agency cases*

## 36 Restrictions on removal

- (1) At any time when a child's home is with any persons ("the people concerned") with whom the child is not placed by an adoption agency, but the people concerned—
- (a) have applied for an adoption order in respect of the child and the application has not been disposed of,
  - (b) have given notice of intention to adopt, or
  - (c) have applied for leave to apply for an adoption order under section 42(6) and the application has not been disposed of,

a person may remove the child only in accordance with the provisions of this group of sections (that is, this section and sections 37 to 40).

The reference to a child placed by an adoption agency includes a child placed by a Scottish or Northern Irish adoption agency.

- (2) For the purposes of this group of sections, a notice of intention to adopt is to be disregarded if—
- (a) the period of four months beginning with the giving of the notice has expired without the people concerned applying for an adoption order, or
  - (b) the notice is a second or subsequent notice of intention to adopt and was given during the period of five months beginning with the giving of the preceding notice.
- (3) For the purposes of this group of sections, if the people concerned apply for leave to apply for an adoption order under section 42(6) and the leave is granted, the application for leave is not to be treated as disposed of until the period of three days beginning with the granting of the leave has expired.
- (4) This section does not prevent the removal of a child who is arrested.
- (5) Where a parent or guardian may remove a child from the people concerned in accordance with the provisions of this group of sections, the people concerned must at the request of the parent or guardian return the child to the parent or guardian at once.
- (6) A person who—
- (a) fails to comply with subsection (5), or
  - (b) removes a child in contravention of this section,
- is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (7) This group of sections applies whether or not the child in question is in England and Wales.

#### **Modifications etc. (not altering text)**

**C21** S. 36 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 52, 54(2)(a)

**C22** Ss. 36-40 excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 54(1)



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- C23** S. 36(1) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**
- C24** S. 36(2) excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **6(b)**
- C25** S. 36(4) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**
- C26** S. 36(5) excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **6(b)**
- C27** S. 36(6)(7) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**

#### Commencement Information

- I21** S. 36 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

### 37 Applicants for adoption

If section 36(1)(a) applies, the following persons may remove the child—

- (a) a person who has the court’s leave,
- (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

#### Modifications etc. (not altering text)

- C22** [Ss. 36-40](#) excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **54(1)**
- C28** S. 37 applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**

#### Commencement Information

- I22** S. 37 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

### 38 Local authority foster parents

- (1) This section applies if the child’s home is with local authority foster parents.
- (2) If—
  - (a) the child has had his home with the foster parents at all times during the period of five years ending with the removal and the foster parents have given notice of intention to adopt, or
  - (b) an application has been made for leave under section 42(6) and has not been disposed of,the following persons may remove the child.
- (3) They are—
  - (a) a person who has the court’s leave,
  - (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.
- (4) If subsection (2) does not apply but—

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- (a) the child has had his home with the foster parents at all times during the period of one year ending with the removal, and
  - (b) the foster parents have given notice of intention to adopt,
- the following persons may remove the child.
- (5) They are—
- (a) a person with parental responsibility for the child who is exercising the power in section 20(8) of the 1989 Act,
  - (b) a person who has the court’s leave,
  - (c) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

**Modifications etc. (not altering text)**

**C22** Ss. 36-40 excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **54(1)**

**Commencement Information**

**I23** S. 38 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

**39 Partners of parents**

- (1) This section applies if a child’s home is with a partner of a parent and the partner has given notice of intention to adopt.
- (2) If the child’s home has been with the partner for not less than three years (whether continuous or not) during the period of five years ending with the removal, the following persons may remove the child—
  - (a) a person who has the court’s leave,
  - (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.
- (3) If subsection (2) does not apply, the following persons may remove the child—
  - (a) a parent or guardian,
  - (b) a person who has the court’s leave,
  - (c) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

**Modifications etc. (not altering text)**

**C22** Ss. 36-40 excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **54(1)**

**C29** S. 39 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **52, 54(2)(b)**

**C30** S. 39(3)(a) excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **6(b)**

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#### Commencement Information

**I24** S. 39 in force at 30.12.2005 by S.I. 2005/2213, art. 2(c) (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

### 40 Other non-agency cases

- (1) In any case where sections 37 to 39 do not apply but—
  - (a) the people concerned have given notice of intention to adopt, or
  - (b) the people concerned have applied for leave under section 42(6) and the application has not been disposed of,the following persons may remove the child.
- (2) They are—
  - (a) a person who has the court’s leave,
  - (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.

#### Modifications etc. (not altering text)

**C22** Ss. 36-40 excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **54(1)**

#### Commencement Information

**I25** S. 40 in force at 30.12.2005 by S.I. 2005/2213, art. 2(c) (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

### *Breach of restrictions on removal*

### 41 Recovery orders

- (1) This section applies where it appears to the court—
  - (a) that a child has been removed in contravention of any of the preceding provisions of this Chapter or that there are reasonable grounds for believing that a person intends to remove a child in contravention of those provisions, or
  - (b) that a person has failed to comply with section 31(4), 32(2), 33(2), 34(3) or 35(2).
- (2) The court may, on the application of any person, by an order—
  - (a) direct any person who is in a position to do so to produce the child on request to any person mentioned in subsection (4),
  - (b) authorise the removal of the child by any person mentioned in that subsection,
  - (c) require any person who has information as to the child’s whereabouts to disclose that information on request to any constable or officer of the court,
  - (d) authorise a constable to enter any premises specified in the order and search for the child, using reasonable force if necessary.
- (3) Premises may only be specified under subsection (2)(d) if it appears to the court that there are reasonable grounds for believing the child to be on them.

*Status: Point in time view as at 02/11/2010.*

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- (4) The persons referred to in subsection (2) are—
- (a) any person named by the court,
  - (b) any constable,
  - (c) any person who, after the order is made under that subsection, is authorised to exercise any power under the order by an adoption agency which is authorised to place the child for adoption.
- (5) A person who intentionally obstructs a person exercising a power of removal conferred by the order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) A person must comply with a request to disclose information as required by the order even if the information sought might constitute evidence that he had committed an offence.
- (7) But in criminal proceedings in which the person is charged with an offence (other than one mentioned in subsection (8))—
- (a) no evidence relating to the information provided may be adduced, and
  - (b) no question relating to the information may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.
- (8) The offences excluded from subsection (7) are—
- (a) an offence under section 2 or 5 of the Perjury Act 1911 (c. 6) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath),
  - (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (false statements made on oath or otherwise than on oath).
- (9) An order under this section has effect in relation to Scotland as if it were an order made by the Court of Session which that court had jurisdiction to make.

**Modifications etc. (not altering text)**

**C31** S. 41 applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**

**Commencement Information**

**I26** S. 41(1)-(4) in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

**I27** S. 41(5)-(9) in force at 30.12.2005 for E.W. by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

**I28** S. 41(5)-(9) in force at 30.12.2005 in so far as not already in force by [S.S.I. 2005/643](#), **art. 2(a)**

*Preliminaries to adoption*

**42 Child to live with adopters before application**

- (1) An application for an adoption order may not be made unless—
- (a) if subsection (2) applies, the condition in that subsection is met,

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- (b) if that subsection does not apply, the condition in whichever is applicable of subsections (3) to (5) applies.
- (2) If —
  - (a) the child was placed for adoption with the applicant or applicants by an adoption agency or in pursuance of an order of the High Court, or
  - (b) the applicant is a parent of the child,the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them at all times during the period of ten weeks preceding the application.
- (3) If the applicant or one of the applicants is the partner of a parent of the child, the condition is that the child must have had his home with the applicant or, as the case may be, applicants at all times during the period of six months preceding the application.
- (4) If the applicants are local authority foster parents, the condition is that the child must have had his home with the applicants at all times during the period of one year preceding the application.
- (5) In any other case, the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them for not less than three years (whether continuous or not) during the period of five years preceding the application.
- (6) But subsections (4) and (5) do not prevent an application being made if the court gives leave to make it.
- (7) An adoption order may not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a couple, both of them together in the home environment have been given—
  - (a) where the child was placed for adoption with the applicant or applicants by an adoption agency, to that agency,
  - (b) in any other case, to the local authority within whose area the home is.
- (8) In this section and sections 43 and 44(1)—
  - (a) references to an adoption agency include a Scottish or Northern Irish adoption agency,
  - (b) references to a child placed for adoption by an adoption agency are to be read accordingly.

**Modifications etc. (not altering text)**

- C32** S. 42 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 6, 9(1)
- C33** S. 42 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 6, 9(2)
- C34** S. 42 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 52, 56
- C35** S. 42(7) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 11(1)(i), 52, 55

*Status: Point in time view as at 02/11/2010.*

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#### **Commencement Information**

**I29** S. 42 in force at 30.12.2005 by S.I. 2005/2213, art. 2(c) (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

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

Where an application for an adoption order relates to a child placed for adoption by an adoption agency, the agency must—

- (a) submit to the court a report on the suitability of the applicants and on any other matters relevant to the operation of section 1, and
- (b) assist the court in any manner the court directs.

#### **Modifications etc. (not altering text)**

**C36** S. 43 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 11(1)(j), 52, 55

#### **Commencement Information**

**I30** S. 43 in force at 30.12.2005 by S.I. 2005/2213, art. 2(c) (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

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

- (1) This section applies where persons (referred to in this section as “proposed adopters”) wish to adopt a child who is not placed for adoption with them by an adoption agency.
- (2) An adoption order may not be made in respect of the child unless the proposed adopters have given notice to the appropriate local authority of their intention to apply for the adoption order (referred to in this Act as a “notice of intention to adopt”).
- (3) The notice must be given not more than two years, or less than three months, before the date on which the application for the adoption order is made.
- (4) Where—
  - (a) if a person were seeking to apply for an adoption order, subsection (4) or (5) of section 42 would apply, but
  - (b) the condition in the subsection in question is not met,
 the person may not give notice of intention to adopt unless he has the court’s leave to apply for an adoption order.
- (5) On receipt of a notice of intention to adopt, the local authority must arrange for the investigation of the matter and submit to the court a report of the investigation.
- (6) In particular, the investigation must, so far as practicable, include the suitability of the proposed adopters and any other matters relevant to the operation of section 1 in relation to the application.
- (7) If a local authority receive a notice of intention to adopt in respect of a child whom they know was (immediately before the notice was given) looked after by another local authority, they must, not more than seven days after the receipt of the notice, inform the other local authority in writing that they have received the notice.

*Status: Point in time view as at 02/11/2010.*

*Changes to legislation: Adoption and Children Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) Where—
- (a) a local authority have placed a child with any persons otherwise than as prospective adopters, and
  - (b) the persons give notice of intention to adopt,
- the authority are not to be treated as leaving the child with them as prospective adopters for the purposes of section 18(1)(b).
- (9) In this section, references to the appropriate local authority, in relation to any proposed adopters, are—
- (a) in prescribed cases, references to the prescribed local authority,
  - (b) in any other case, references to the local authority for the area in which, at the time of giving the notice of intention to adopt, they have their home,
- and “prescribed” means prescribed by regulations.

**Modifications etc. (not altering text)**

- C37** S. 44 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **52**, 57
- C38** S. 44(2) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(k)**, 52, 55

**Commencement Information**

- I31** S. 44 in force at 7.12.2004 for specified purposes by [S.I. 2004/3203](#), **art. 2(1)(m)(iv)**
- I32** S. 44 in force at 30.12.2005 in so far as not already in force by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

**45 Suitability of adopters**

- (1) Regulations under section 9 may make provision as to the matters to be taken into account by an adoption agency in determining, or making any report in respect of, the suitability of any persons to adopt a child.
- (2) In particular, the regulations may make provision for the purpose of securing that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship.

**Commencement Information**

- I33** S. 45 in force at 7.12.2004 by [S.I. 2004/3203](#), **art. 2(1)(g)**

*The making of adoption orders*

**46 Adoption orders**

- (1) An adoption order is an order made by the court on an application under section 50 or 51 giving parental responsibility for a child to the adopters or adopter.
- (2) The making of an adoption order operates to extinguish—

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- (a) the parental responsibility which any person other than the adopters or adopter has for the adopted child immediately before the making of the order,
- (b) any order under the 1989 Act or the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),
- (c) any order under the Children (Scotland) Act 1995 (c. 36) other than an excepted order, and
- (d) any duty arising by virtue of an agreement or an order of a court to make payments, so far as the payments are in respect of the adopted child's maintenance or upbringing for any period after the making of the adoption order.

“Excepted order” means an order under section 9, 11(1)(d) or 13 of the Children (Scotland) Act 1995 or an exclusion order within the meaning of section 76(1) of that Act.

- (3) An adoption order—
  - (a) does not affect parental responsibility so far as it relates to any period before the making of the order, and
  - (b) in the case of an order made on an application under section 51(2) by the partner of a parent of the adopted child, does not affect the parental responsibility of that parent or any duties of that parent within subsection (2) (d).
- (4) Subsection (2)(d) does not apply to a duty arising by virtue of an agreement—
  - (a) which constitutes a trust, or
  - (b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.
- (5) An adoption order may be made even if the child to be adopted is already an adopted child.
- (6) Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.

**Modifications etc. (not altering text)**

**C39** [S. 46\(1\)-\(4\)](#) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, [Sch. 1](#)

**Commencement Information**

**I34** [S. 46](#) in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

**47 Conditions for making adoption orders**

- (1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met; but this section is subject to section 52 (parental etc. consent).



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- (2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied—
  - (a) that the parent or guardian consents to the making of the adoption order,
  - (b) that the parent or guardian has consented under section 20 (and has not withdrawn the consent) and does not oppose the making of the adoption order, or
  - (c) that the parent’s or guardian’s consent should be dispensed with.
- (3) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court’s leave.
- (4) The second condition is that—
  - (a) the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made,
  - (b) either—
    - (i) the child was placed for adoption with the consent of each parent or guardian and the consent of the mother was given when the child was at least six weeks old, or
    - (ii) the child was placed for adoption under a placement order, and
  - (c) no parent or guardian opposes the making of the adoption order.
- (5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court’s leave.
- (6) The third condition is that the child is free for adoption by virtue of an order made—
  - (a) in Scotland, under section 18 of the Adoption (Scotland) Act 1978 (c. 28), or
  - (b) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).
- (7) The court cannot give leave under subsection (3) or (5) unless satisfied that there has been a change in circumstances since the consent of the parent or guardian was given or, as the case may be, the placement order was made.
- (8) An adoption order may not be made in relation to a person who is or has been married.
- [<sup>F4</sup>(8A) An adoption order may not be made in relation to a person who is or has been a civil partner.]
- (9) An adoption order may not be made in relation to a person who has attained the age of 19 years.

#### Textual Amendments

**F4** S. 47(8A) inserted (30.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 79(3)**, 263(2); S.I. 2005/3175, art. 2(9)

#### Modifications etc. (not altering text)

- C40** S. 47(1)-(5) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(I)**, 52, 55
- C41** S. 47(6) modified (2.11.2010) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Provisions\) Order 2010 \(S.I. 2010/2469\)](#), arts. 1(1), **3**
- C42** S. 47(8)(9) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(I)**, 52, 55

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#### **Commencement Information**

**I35** S. 47 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

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

- (1) The court may not hear an application for an adoption order in relation to a child, where a previous application to which subsection (2) applies made in relation to the child by the same persons was refused by any court, unless it appears to the court that, because of a change in circumstances or for any other reason, it is proper to hear the application.
- (2) This subsection applies to any application—
  - (a) for an adoption order or a Scottish or Northern Irish adoption order, or
  - (b) for an order for adoption made in the Isle of Man or any of the Channel Islands.

#### **Modifications etc. (not altering text)**

- C43** S. 48 applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, [Sch. 1](#)
- C44** S. 48(1) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), [11\(1\)\(m\)](#), 52, 55

#### **Commencement Information**

**I36** S. 48 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

### **49 Applications for adoption**

- (1) An application for an adoption order may be made by—
  - (a) a couple, or
  - (b) one person,
 but only if it is made under section 50 or 51 and one of the following conditions is met.
- (2) The first condition is that at least one of the couple (in the case of an application under section 50) or the applicant (in the case of an application under section 51) is domiciled in a part of the British Islands.
- (3) The second condition is that both of the couple (in the case of an application under section 50) or the applicant (in the case of an application under section 51) have been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of the application.
- (4) An application for an adoption order may only be made if the person to be adopted has not attained the age of 18 years on the date of the application.
- (5) References in this Act to a child, in connection with any proceedings (whether or not concluded) for adoption, (such as “child to be adopted” or “adopted child”) include a person who has attained the age of 18 years before the proceedings are concluded.

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**Modifications etc. (not altering text)**

**C45** S. 49 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), 52, 58

**Commencement Information**

**I37** S. 49 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 50 Adoption by couple

- (1) An adoption order may be made on the application of a couple where both of them have attained the age of 21 years.
- (2) An adoption order may be made on the application of a couple where—
  - (a) one of the couple is the mother or the father of the person to be adopted and has attained the age of 18 years, and
  - (b) the other has attained the age of 21 years.

**Modifications etc. (not altering text)**

**C46** S. 50(1)(2) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), [11\(1\)\(n\)](#), 52, 55

**Commencement Information**

**I38** S. 50 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 51 Adoption by one person

- (1) An adoption order may be made on the application of one person who has attained the age of 21 years and is not married [<sup>F5</sup>or a civil partner].
  - (2) An adoption order may be made on the application of one person who has attained the age of 21 years if the court is satisfied that the person is the partner of a parent of the person to be adopted.
  - (3) An adoption order may be made on the application of one person who has attained the age of 21 years and is married if the court is satisfied that—
    - (a) the person's spouse cannot be found,
    - (b) the spouses have separated and are living apart, and the separation is likely to be permanent, or
    - (c) the person's spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.
- [<sup>F6</sup>(3A) An adoption order may be made on the application of one person who has attained the age of 21 years and is a civil partner if the court is satisfied that—
  - (a) the person's civil partner cannot be found,
  - (b) the civil partners have separated and are living apart, and the separation is likely to be permanent, or

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- (c) the person's civil partner is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.]
- (4) An adoption order may not be made on an application under this section by the mother or the father of the person to be adopted unless the court is satisfied that—
- (a) the other natural parent is dead or cannot be found,
- [<sup>F7</sup>(b) by virtue of the provisions specified in subsection (5), there is no other parent, or]
- (c) there is some other reason justifying the child's being adopted by the applicant alone,
- and, where the court makes an adoption order on such an application, the court must record that it is satisfied as to the fact mentioned in paragraph (a) or (b) or, in the case of paragraph (c), record the reason.
- [<sup>F8</sup>(5) The provisions referred to in subsection (4)(b) are—
- (a) section 28 of the Human Fertilisation and Embryology Act 1990 (disregarding subsections (5A) to (5I) of that section), or
- (b) sections 34 to 47 of the Human Fertilisation and Embryology Act 2008 (disregarding sections 39, 40 and 46 of that Act).]

#### Textual Amendments

- F5** Words in s. 51(1) inserted (30.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 79(4)**, 263(2); S.I. 2005/3175, art. 2(9)
- F6** S. 51(3A) inserted (30.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 79(5)**, 263(2); S.I. 2005/3175, art. 2(9)
- F7** S. 51(4)(b) substituted (6.4.2009 for specified purposes, 1.9.2009 in so far as not already in force) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), s. 68(2), **Sch. 6 para. 39(2)**; S.I. 2009/479, art. 6(1)(e)(2) (with art. 7, Sch.)
- F8** S. 51(5) inserted (6.4.2009 for specified purposes, 1.9.2009 in so far as not already in force) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), s. 68(2), **Sch. 6 para. 39(3)**; S.I. 2009/479, art. 6(1)(e)(2) (with art. 7, Sch.)

#### Modifications etc. (not altering text)

- C47** S. 51(1)-(4) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(o)**, 52, 55

#### Commencement Information

- I39** S. 51 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

### *Placement and adoption: general*

## 52 Parental etc. consent

- (1) The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that—
- (a) the parent or guardian cannot be found or [<sup>F9</sup>lacks capacity (within the meaning of the Mental Capacity Act 2005) to give consent], or

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- (b) the welfare of the child requires the consent to be dispensed with.
- (2) The following provisions apply to references in this Chapter to any parent or guardian of a child giving or withdrawing—
- (a) consent to the placement of a child for adoption, or
- (b) consent to the making of an adoption order (including a future adoption order).
- (3) Any consent given by the mother to the making of an adoption order is ineffective if it is given less than six weeks after the child's birth.
- (4) The withdrawal of any consent to the placement of a child for adoption, or of any consent given under section 20, is ineffective if it is given after an application for an adoption order is made.
- (5) "Consent" means consent given unconditionally and with full understanding of what is involved; but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made.
- (6) "Parent" (except in subsections (9) and (10) below) means a parent having parental responsibility.
- (7) Consent under section 19 or 20 must be given in the form prescribed by rules, and the rules may prescribe forms in which a person giving consent under any other provision of this Part may do so (if he wishes).
- (8) Consent given under section 19 or 20 must be withdrawn—
- (a) in the form prescribed by rules, or
- (b) by notice given to the agency.
- (9) Subsection (10) applies if—
- (a) an agency has placed a child for adoption under section 19 in pursuance of consent given by a parent of the child, and
- (b) at a later time, the other parent of the child acquires parental responsibility for the child.
- (10) The other parent is to be treated as having at that time given consent in accordance with this section in the same terms as those in which the first parent gave consent.

#### Textual Amendments

**F9** Words in s. 52(1)(a) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), **Sch. 6 para. 45** (with ss. 27-29, 62); [S.I. 2007/1897](#), art. 2(1)(d)

#### Modifications etc. (not altering text)

**C48** S. 52(1)-(4) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(p)**, 52, 55

#### Commencement Information

**I40** S. 52 in force at 30.12.2005 by [S.I. 2005/2213](#), art. 2(c) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 53 Modification of 1989 Act in relation to adoption

- (1) Where—

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- (a) a local authority are authorised to place a child for adoption, or
  - (b) a child who has been placed for adoption by a local authority is less than six weeks old,
- regulations may provide for the following provisions of the 1989 Act to apply with modifications, or not to apply, in relation to the child.
- (2) The provisions are—
- (a) section 22(4)(b), (c) and (d) and (5)(b) (duty to ascertain wishes and feelings of certain persons),
  - (b) paragraphs 15 and 21 of Schedule 2 (promoting contact with parents and parents' obligation to contribute towards maintenance).
- (3) Where a registered adoption society is authorised to place a child for adoption or a child who has been placed for adoption by a registered adoption society is less than six weeks old, regulations may provide—
- (a) for section 61 of that Act to have effect in relation to the child whether or not he is accommodated by or on behalf of the society,
  - (b) for subsections (2)(b) to (d) and (3)(b) of that section (duty to ascertain wishes and feelings of certain persons) to apply with modifications, or not to apply, in relation to the child.
- (4) Where a child's home is with persons who have given notice of intention to adopt, no contribution is payable (whether under a contribution order or otherwise) under Part 3 of Schedule 2 to that Act (contributions towards maintenance of children looked after by local authorities) in respect of the period referred to in subsection (5).
- (5) That period begins when the notice of intention to adopt is given and ends if—
- (a) the period of four months beginning with the giving of the notice expires without the prospective adopters applying for an adoption order, or
  - (b) an application for such an order is withdrawn or refused.
- (6) In this section, "notice of intention to adopt" includes notice of intention to apply for a Scottish or Northern Irish adoption order.

#### **Modifications etc. (not altering text)**

**C49** S. 53(5) applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **11(1)(q)**, 52, 55

#### **Commencement Information**

**I41** S. 53(1)-(3) in force at 7.2.2004 for W. by [S.I. 2004/252](#), **art. 2(b)**

**I42** S. 53(1)-(3) in force at 7.12.2004 for E. by [S.I. 2004/3203](#), **art. 2(1)(h)**

**I43** S. 53(4)-(6) in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## **54 Disclosing information during adoption process**

Regulations under section 9 may require adoption agencies in prescribed circumstances to disclose in accordance with the regulations prescribed information to prospective adopters.

*Status: Point in time view as at 02/11/2010.*

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#### Commencement Information

- I44** S. 54 in force at 7.2.2004 for W. by S.I. 2004/252, **art. 2(b)**  
**I45** S. 54 in force at 7.12.2004 for E. by S.I. 2004/3203, **art. 2(1)(i)**

## 55 Revocation of adoptions on legitimization

- (1) Where any child adopted by one natural parent as sole adoptive parent subsequently becomes a legitimated person on the marriage of the natural parents, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke the order.
- (2) In relation to an adoption order made by a magistrates' court, the reference in subsection (1) to the court by which the order was made includes a court acting for the same [<sup>F10</sup>local justice] area.

#### Textual Amendments

- F10** Words in s. 55(2) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 412**; S.I. 2005/910, **art. 3(y)**

#### Commencement Information

- I46** S. 55 in force at 30.12.2005 by S.I. 2005/2213, **art. 2(c)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

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

## 56 Information to be kept about a person's adoption

- (1) In relation to an adopted person, regulations may prescribe—
  - (a) the information which an adoption agency must keep in relation to his adoption,
  - (b) the form and manner in which it must keep that information.
- (2) Below in this group of sections (that is, this section and sections 57 to 65), any information kept by an adoption agency by virtue of subsection (1)(a) is referred to as section 56 information.
- (3) Regulations may provide for the transfer in prescribed circumstances of information held, or previously held, by an adoption agency to another adoption agency.

#### Commencement Information

- I47** S. 56 in force at 7.12.2004 for specified purposes for E. by S.I. 2004/3203, **art. 2(1)(m)(v)**  
**I48** S. 56 in force at 30.12.2005 for E. in so far as not already in force by S.I. 2005/2213, **art. 3(k)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)  
**I49** S. 56(1)(3) in force at 7.2.2004 for W. by S.I. 2004/252, **art. 2(b)**  
**I50** S. 56(2) in force at 30.12.2005 for W. by S.I. 2005/3112, **art. 2(e)**

*Status: Point in time view as at 02/11/2010.*

*Changes to legislation: Adoption and Children Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 57 Restrictions on disclosure of protected etc. information

- (1) Any section 56 information kept by an adoption agency which—
  - (a) is about an adopted person or any other person, and
  - (b) is or includes identifying information about the person in question,
 may only be disclosed by the agency to a person (other than the person the information is about) in pursuance of this group of sections.
- (2) Any information kept by an adoption agency—
  - (a) which the agency has obtained from the Registrar General on an application under section 79(5) and any other information which would enable the adopted person to obtain a certified copy of the record of his birth, or
  - (b) which is information about an entry relating to the adopted person in the Adoption Contact Register,
 may only be disclosed to a person by the agency in pursuance of this group of sections.
- (3) In this group of sections, information the disclosure of which to a person is restricted by virtue of subsection (1) or (2) is referred to (in relation to him) as protected information.
- (4) Identifying information about a person means information which, whether taken on its own or together with other information disclosed by an adoption agency, identifies the person or enables the person to be identified.
- (5) This section does not prevent the disclosure of protected information in pursuance of a prescribed agreement to which the adoption agency is a party.
- (6) Regulations may authorise or require an adoption agency to disclose protected information to a person who is not an adopted person.

### Commencement Information

- I51** S. 57 in force at 7.12.2004 for specified purposes for E. by S.I. 2004/3203, art. 2(1)(m)(v)
- I52** S. 57 in force at 30.12.2005 for E. in so far as not already in force by S.I. 2005/2213, art. 3(k) (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)
- I53** S. 57(1)-(4)(6) in force at 30.12.2005 for W. by S.I. 2005/3112, art. 2(e)
- I54** S. 57(5) in force at 7.2.2004 for specified purposes for W. by S.I. 2004/252, art. 2(c)
- I55** S. 57(5) in force at 30.12.2005 for W. in so far as not already in force by S.I. 2005/3112, art. 2(e)
- I56** S. 57(6) in force at 7.2.2004 for W. by S.I. 2004/252, art. 2(b)

## 58 Disclosure of other information

- (1) This section applies to any section 56 information other than protected information.
- (2) An adoption agency may for the purposes of its functions disclose to any person in accordance with prescribed arrangements any information to which this section applies.
- (3) An adoption agency must, in prescribed circumstances, disclose prescribed information to a prescribed person.



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#### Commencement Information

- I57** S. 58 in force at 7.12.2004 for specified purposes for E. by S.I. 2004/3203, **art. 2(1)(m)(v)**
- I58** S. 58 in force at 30.12.2005 for E. in so far as not already in force by S.I. 2005/2213, **art. 3(k)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)
- I59** S. 58(1) in force at 30.12.2005 for W. by S.I. 2005/3112, **art. 2(e)**
- I60** S. 58(2)(3) in force at 7.2.2004 for specified purposes for W. by S.I. 2004/252, **art. 2(c)**
- I61** S. 58(2)(3) in force at 30.12.2005 for W. in so far as not already in force by S.I. 2005/3112, **art. 2(e)**

## 59 Offence

Regulations may provide that a registered adoption society which discloses any information in contravention of section 57 is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

- I62** S. 59 in force at 7.2.2004 for W. by S.I. 2004/252, **art. 2(b)**
- I63** S. 59 in force at 7.12.2004 for specified purposes for E. by S.I. 2004/3203, **art. 2(1)(m)(v)**
- I64** S. 59 in force at 30.12.2005 for E. in so far as not already in force by S.I. 2005/2213, **art. 3(k)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)

## 60 Disclosing information to adopted adult

- (1) This section applies to an adopted person who has attained the age of 18 years.
- (2) The adopted person has the right, at his request, to receive from the appropriate adoption agency—
  - (a) any information which would enable him to obtain a certified copy of the record of his birth, unless the High Court orders otherwise,
  - (b) any prescribed information disclosed to the adopters by the agency by virtue of section 54.
- (3) The High Court may make an order under subsection (2)(a), on an application by the appropriate adoption agency, if satisfied that the circumstances are exceptional.
- (4) The adopted person also has the right, at his request, to receive from the court which made the adoption order a copy of any prescribed document or prescribed order relating to the adoption.
- (5) Subsection (4) does not apply to a document or order so far as it contains information which is protected information.

#### Modifications etc. (not altering text)

- C50** S. 60(1) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**
- C51** S. 60(4) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**

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#### Commencement Information

- I65** S. 60(1)(3)(5) in force at 30.12.2005 for W. by S.I. 2005/3112, **art. 2(f)**
- I66** S. 60(1)(3)(5) in force at 30.12.2005 for E. by S.I. 2005/2213, **art. 3(k)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)
- I67** S. 60(2)(4) in force at 7.2.2004 for specified purposes for W. by S.I. 2004/252, **art. 2(c)**
- I68** S. 60(2)(4) in force at 7.12.2004 for specified purposes for E. by S.I. 2004/3203, **art. 2(1)(m)(v)**
- I69** S. 60(2)(4) in force at 30.12.2005 for E. in so far as not already in force by S.I. 2005/2213, **art. 3(k)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)
- I70** S. 60(2)(4) in force at 30.12.2005 for W. in so far as not already in force by S.I. 2005/3112, **art. 2(f)**

## 61 Disclosing protected information about adults

- (1) This section applies where—
- (a) a person applies to the appropriate adoption agency for protected information to be disclosed to him, and
  - (b) none of the information is about a person who is a child at the time of the application.
- (2) The agency is not required to proceed with the application unless it considers it appropriate to do so.
- (3) If the agency does proceed with the application it must take all reasonable steps to obtain the views of any person the information is about as to the disclosure of the information about him.
- (4) The agency may then disclose the information if it considers it appropriate to do so.
- (5) In deciding whether it is appropriate to proceed with the application or disclose the information, the agency must consider—
- (a) the welfare of the adopted person,
  - (b) any views obtained under subsection (3),
  - (c) any prescribed matters,
- and all the other circumstances of the case.
- (6) This section does not apply to a request for information under section 60(2) or 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).

#### Commencement Information

- I71** S. 61(1)-(4)(6) in force at 30.12.2005 for E. by S.I. 2005/2213, **art. 3(k)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)
- I72** S. 61(1)-(4)(5)(a)(b)(6) in force at 30.12.2005 for W. by S.I. 2005/3112, **art. 2(f)**
- I73** S. 61(5) in force at 7.12.2004 for specified purposes for E. by S.I. 2004/3203, **art. 2(1)(m)(v)**
- I74** S. 61(5) in force at 30.12.2005 for E. in so far as not already in force by S.I. 2005/2213, **art. 3(k)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)
- I75** S. 61(5)(c) in force at 7.2.2004 for specified purposes for W. by S.I. 2004/252, **art. 2(c)**
- I76** S. 61(5)(c) in force at 30.12.2005 for W. in so far as not already in force by S.I. 2005/3112, **art. 2(f)**

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## 62 Disclosing protected information about children

- (1) This section applies where—
  - (a) a person applies to the appropriate adoption agency for protected information to be disclosed to him, and
  - (b) any of the information is about a person who is a child at the time of the application.
- (2) The agency is not required to proceed with the application unless it considers it appropriate to do so.
- (3) If the agency does proceed with the application, then, so far as the information is about a person who is at the time a child, the agency must take all reasonable steps to obtain—
  - (a) the views of any parent or guardian of the child, and
  - (b) the views of the child, if the agency considers it appropriate to do so having regard to his age and understanding and to all the other circumstances of the case,as to the disclosure of the information.
- (4) And, so far as the information is about a person who has at the time attained the age of 18 years, the agency must take all reasonable steps to obtain his views as to the disclosure of the information.
- (5) The agency may then disclose the information if it considers it appropriate to do so.
- (6) In deciding whether it is appropriate to proceed with the application, or disclose the information, where any of the information is about a person who is at the time a child—
  - (a) if the child is an adopted child, the child’s welfare must be the paramount consideration,
  - (b) in the case of any other child, the agency must have particular regard to the child’s welfare.
- (7) And, in deciding whether it is appropriate to proceed with the application or disclose the information, the agency must consider—
  - (a) the welfare of the adopted person (where subsection (6)(a) does not apply),
  - (b) any views obtained under subsection (3) or (4),
  - (c) any prescribed matters,and all the other circumstances of the case.
- (8) This section does not apply to a request for information under section 60(2) or 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).

### Commencement Information

- I77** S. 62(1)-(6)(7)(a)(b)(8) in force at 30.12.2005 for W. by S.I. 2005/3112, **art. 2(f)**
- I78** S. 62(1)-(6)(8) in force at 30.12.2005 for E. by S.I. 2005/2213, **art. 3(k)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)
- I79** S. 62(7) in force at 7.12.2004 for specified purposes for E. by S.I. 2004/3203, **art. 2(1)(m)(v)**
- I80** S. 62(7) in force at 30.12.2005 for E. in so far as not already in force by S.I. 2005/2213, **art. 3(k)** (with savings and transitional provisions in S.I. 2005/2897, arts. 3-16)
- I81** S. 62(7)(c) in force at 7.2.2004 for specified purposes for W. by S.I. 2004/252, **art. 2(c)**
- I82** S. 62(7)(c) in force at 30.12.2005 for W. in so far as not already in force by S.I. 2005/3112, **art. 2(f)**

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## 63 Counselling

- (1) Regulations may require adoption agencies to give information about the availability of counselling to persons—
  - (a) seeking information from them in pursuance of this group of sections,
  - (b) considering objecting or consenting to the disclosure of information by the agency in pursuance of this group of sections, or
  - (c) considering entering with the agency into an agreement prescribed for the purposes of section 57(5).
- (2) Regulations may require adoption agencies to make arrangements to secure the provision of counselling for persons seeking information from them in prescribed circumstances in pursuance of this group of sections.
- (3) The regulations may authorise adoption agencies—
  - (a) to disclose information which is required for the purposes of such counselling to the persons providing the counselling,
  - (b) where the person providing the counselling is outside the United Kingdom, to require a prescribed fee to be paid.
- (4) The regulations may require any of the following persons to provide counselling for the purposes of arrangements under subsection (2)—
  - (a) a local authority, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39) or a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)),
  - (b) a registered adoption society, an organisation within section 144(3)(b) or an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)),
  - (c) an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000 (c. 14).
- (5) For the purposes of subsection (4), where the functions of a Health and Social Services Board are exercisable by a Health and Social Services Trust, the reference in subparagraph (a) to a Board is to be read as a reference to the Health and Social Services Trust.

### Commencement Information

**I83** S. 63 in force at 7.2.2004 for W. by S.I. 2004/252, art. 2(b)

**I84** S. 63 in force at 7.12.2004 in so far as not already in force by S.I. 2004/3203, art. 2(1)(j)

## 64 Other provision to be made by regulations

- (1) Regulations may make provision for the purposes of this group of sections, including provision as to—
  - (a) the performance by adoption agencies of their functions,
  - (b) the manner in which information may be received, and
  - (c) the matters mentioned below in this section.
- (2) Regulations may prescribe—

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- (a) the manner in which agreements made by virtue of section 57(5) are to be recorded,
  - (b) the information to be provided by any person on an application for the disclosure of information under this group of sections.
- (3) Regulations may require adoption agencies—
- (a) to give to prescribed persons prescribed information about the rights or opportunities to obtain information, or to give their views as to its disclosure, given by this group of sections,
  - (b) to seek prescribed information from, or give prescribed information to, the Registrar General in prescribed circumstances.
- (4) Regulations may require the Registrar General—
- (a) to disclose to any person (including an adopted person) at his request any information which the person requires to assist him to make contact with the adoption agency which is the appropriate adoption agency in the case of an adopted person specified in the request (or, as the case may be, in the applicant’s case),
  - (b) to disclose to the appropriate adoption agency any information which the agency requires about any entry relating to the adopted person on the Adoption Contact Register.
- (5) Regulations may provide for the payment of a prescribed fee in respect of the disclosure in prescribed circumstances of any information in pursuance of section 60, 61 or 62; but an adopted person may not be required to pay any fee in respect of any information disclosed to him in relation to any person who (but for his adoption) would be related to him by blood (including half-blood) [<sup>F11</sup>, marriage or civil partnership].
- (6) Regulations may provide for the payment of a prescribed fee by an adoption agency obtaining information under subsection (4)(b).

#### Textual Amendments

**F11** Words in s. 64(5) substituted (30.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 79(6)**, 263(2); S.I. 2005/3175, art. 2(9)

#### Modifications etc. (not altering text)

**C52** S. 64(1) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**

#### Commencement Information

**I85** S. 64 in force at 7.2.2004 for W. by S.I. 2004/252, **art. 2(b)**

**I86** S. 64 in force at 7.12.2004 for E. by S.I. 2004/3203, **art. 2(1)(j)**

## 65 Sections 56 to 65: interpretation

- (1) In this group of sections—
- “appropriate adoption agency”, in relation to an adopted person or to information relating to his adoption, means—
- (a) if the person was placed for adoption by an adoption agency, that agency or (if different) the agency which keeps the information in relation to his adoption,

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- (b) in any other case, the local authority to which notice of intention to adopt was given,  
 “prescribed” means prescribed by subordinate legislation,  
 “regulations” means regulations under section 9,  
 “subordinate legislation” means regulations or, in relation to information to be given by a court, rules.
- (2) But—
- (a) regulations under section 63(2) imposing any requirement on a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), or an organisation within section 144(3)(b), are to be made by the Scottish Ministers,
- (b) regulations under section 63(2) imposing any requirement on a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/ 1265 (N.I. 14)), or an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)), are to be made by the Department of Health, Social Services and Public Safety.
- (3) The power of the Scottish Ministers or of the Department of Health, Social Services and Public Safety to make regulations under section 63(2) includes power to make—
- (a) any supplementary, incidental or consequential provision,  
 (b) any transitory, transitional or saving provision,
- which the person making the regulations considers necessary or expedient.
- (4) Regulations prescribing any fee by virtue of section 64(6) require the approval of the Chancellor of the Exchequer.
- (5) Regulations making any provision as to the manner in which any application is to be made for the disclosure of information by the Registrar General require his approval.

**Modifications etc. (not altering text)**

**C53** S. 65(1) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**

**Commencement Information**

**I87** S. 65 in force at 7.2.2004 for W. by [S.I. 2004/252](#), **art. 2(b)**

**I88** S. 65 in force at 7.12.2004 in so far as not already in force by [S.I. 2004/3203](#), **art. 2(1)(j)**

**Status:**

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**Changes to legislation:**

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