

# Adoption and Children

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A

## **B I L L**

TO

Restate and amend the law relating to adoption; to make further amendments of the law relating to children; and for connected purposes.

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

ADOPTION

CHAPTER 1

INTRODUCTORY

### **Considerations applying to the exercise of powers [j1]**

1.—(1) This section applies whenever a court or adoption agency is coming to a decision relating to the adoption of a child.

(2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout the life of the child.

(3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.

(4) The court or adoption agency must have regard to the following matters (among others)—

- (a) the value to the child of a stable and harmonious family unit;
- (b) the child's particular needs;
- (c) the likely effect on the child (throughout the life of the child) of having ceased to be a member of the original family and become an adopted person;
- (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant;

- (e) any harm (within the meaning of the Children Order) which the child has suffered or is at risk of suffering;
- (f) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding);
- (g) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—
  - (i) the likelihood of any such relationship continuing and the value to the child of its doing so;
  - (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs;
  - (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

(5) In placing the child for adoption, the adoption agency must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

(6) The court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Order); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

(7) In this section "coming to a decision relating to the adoption of a child", in relation to a court, includes—

- (a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a placement order (or the revocation of such an order) or an order under section 22 or 49 (or the revocation or variation of such an order); and
- (b) coming to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an adoption agency or individual under this Act,

but does not include coming to a decision about granting leave in any other circumstances.

(8) For the purposes of this section—

- (a) references to relationships are not confined to legal relationships;
- (b) references to a relative, in relation to a child, include the child's mother and father.



CHAPTER 2

THE ADOPTION SERVICE

*The Adoption Service*

**Basic definitions [j2]**

2.—(1) The services maintained under section 4(1) may be collectively referred to as “the Adoption Service”.

(2) In this Act—

“adoption agency”, means an adoption authority or an appropriate voluntary organisation;

“adoption society” means a body whose functions consist of or include making arrangements for the adoption of children;

“adoption authority” is to be construed in accordance with section 3.

(3) In this Act “appropriate voluntary organisation” means a voluntary organisation which is an adoption society in respect of which a person is registered; but in relation to the provision of any facility of the Adoption Service, references to an appropriate voluntary organisation or to an adoption agency do not include an adoption society if the registration is not in respect of that facility.

(4) Registration in respect of an adoption society is to be treated as being in respect of any facility of the Adoption Service unless it is a condition of the registration that that facility is not provided.

(5) In subsections (3) and (4)—

“registered” means registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“registration” means registration under that Order.

(6) In this Act “adoption support services” means—

(a) counselling, advice and information, and

(b) such other services as may be prescribed,

in relation to adoption.

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

(8) In this Chapter references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the United Kingdom, the Channel Islands and the Isle of Man.

**Adoption authority [j2AA]**

3.—(1) Every HSC trust is the adoption authority in relation to its area.

(2) But regulations may provide that in relation to prescribed functions or services under this Act another HSC trust is to be the adoption authority in relation to that area.

(3) In this Act—

“HSC trust” means a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 except the Northern Ireland Ambulance Service Health and Social Care Trust; and

references to the area of an HSC trust are to the area prescribed as the area of that trust for the purposes of this Act.

(4) Regulations may amend the definition of “HSC trust” in subsection (3).

(5) The Regional Board is the adoption authority in relation to any area in relation to which there would otherwise be no adoption authority.

### **The Adoption Service [j3]**

**4.**—(1) An adoption authority must maintain a service designed to meet the needs, in relation to adoption, of—

- (a) children who may be adopted, their parents and guardians;
- (b) persons wishing to adopt a child; and
- (c) adopted persons, their parents, natural parents and former guardians;

and for that purpose must provide the requisite facilities.

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

- (a) for the adoption of children; and
- (b) for the provision of adoption support services.

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

- (a) must extend to the provision of adoption support services to persons who are within a prescribed description;
- (b) may extend to the provision of those services to other persons.

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

- (a) an appropriate voluntary organisation; or
- (b) other persons who are within a prescribed description of persons who may provide the facilities in question.

(5) The facilities of the service must be provided in conjunction with any other social care provided by the adoption authority and with appropriate voluntary organisations, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.

(6) In this section “social care” has the meaning given by section 2(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (and, in particular, social care in so far as it relates to children).

### **Assessments etc., for adoption support services [j4]**

**5.**—(1) An adoption authority must at the request of—

- (a) any of the persons mentioned in paragraphs (a) to (c) of section 4(1), or

- (b) any other person who falls within a prescribed description (subject to subsection (7)(a)),  
carry out an assessment of that person's needs for adoption support services.
- (2) An adoption authority may, at the request of any person, carry out an assessment of that person's needs for adoption support services.
- (3) An adoption authority may request the help of the persons mentioned in paragraph (a) or (b) of section 4(4) in carrying out an assessment.
- (4) Where, as a result of an assessment, an adoption authority decides that a person has needs for adoption support services, the adoption authority must then decide whether to provide any such services to that person.
- (5) If—
- (a) an adoption authority decides to provide any adoption support services to a person, and
  - (b) the circumstances fall within a prescribed description,
- the adoption authority must prepare a plan in accordance with which adoption support services are to be provided to the person and keep the plan under review.
- (6) Regulations may make provision about assessments, preparing and reviewing plans, the provision of adoption support services in accordance with plans and reviewing the provision of adoption support services.
- (7) The regulations may in particular make provision—
- (a) as to the circumstances in which a person mentioned in paragraph (b) of subsection (1) is to have a right to request an assessment of that person's needs in accordance with that subsection;
  - (b) about the type of assessment which, or the way in which an assessment, is to be carried out;
  - (c) about the way in which a plan is to be prepared;
  - (d) about the way in which, and time at which, a plan or the provision of adoption support services is to be reviewed;
  - (e) about the considerations to which an adoption authority is to have regard in carrying out an assessment or review or preparing a plan;
  - (f) as to the circumstances in which an adoption authority may provide adoption support services subject to conditions;
  - (g) as to the consequences of conditions imposed by virtue of paragraph (f) not being met (including the recovery of any financial support provided by an adoption authority);
  - (h) as to the circumstances in which this section may apply to an adoption authority in respect of persons who are outside its area;
  - (i) as to the circumstances in which an adoption authority may recover from another adoption authority the expenses of providing adoption support services to any person.
- (8) An adoption authority may carry out an assessment of the needs of any person under this section at the same time as an assessment of that person's needs is made under any other statutory provision.

(9) If at any time during the assessment of the needs of any person under this section, it appears to an adoption authority that there may be a need for the provision of services to that person—

(a) by another health and social care body (within the meaning of the Health and Social Care (Reform) Act (Northern Ireland) 2009); or

(b) by the Education Authority,

the adoption authority must notify the body or the Education Authority, as the case may be.

(10) Where it appears to an adoption authority that another public body could, by taking any specified action, help in the exercise of any of the adoption authority's functions under this section, the adoption authority may request the help of that body, specifying the action in question.

(11) A public body whose help is so requested must comply with the request if it is consistent with the exercise of its functions.

#### **Arrangements on cancellation or expiry of registration [j6]**

6.—(1) Where, by virtue of the cancellation or expiry of its registration, a body has ceased to be an appropriate voluntary organisation, the Department may direct the organisation to make such arrangements as to the transfer of the organisation's functions relating to children and other transitional matters as seem to the Department expedient.

(2) In this section "registration" means registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

#### **Inactive or defunct adoption societies, etc. [j7]**

7.—(1) This section applies where it appears to the Department that—

(a) a body which is or has been an appropriate voluntary organisation is inactive or defunct, or

(b) a body which has ceased to be an appropriate voluntary organisation by virtue of the cancellation or expiry of its registration has not made such arrangements for the transfer of its functions relating to children as are specified in a direction given by the Department.

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

(3) An adoption authority is entitled to take any action which—

(a) apart from this subsection the authority would not be entitled to take, or would not be entitled to take without joining the organisation in the action, but

(b) the authority is directed to take under subsection (2).

(4) The Department may charge the organisation for expenses necessarily incurred by the Department or on its behalf in securing the transfer of the organisation's functions relating to children.

(5) Before giving a direction under subsection (2) the Department must, if practicable, consult both the organisation and the adoption authority.

(6) In this section "registration" means registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

*Regulations*

**General power to regulate adoption agencies [j9]**

**8.**—(1) Regulations may make provision for any purpose relating to the exercise by adoption agencies of their functions in relation to adoption.

(2) The extent of the power to make regulations under this section is not limited by sections 9 to 11, 41, 42, 53, 55 to 64 and 98 or by any other powers exercisable in respect of adoption agencies.

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

**Management, etc., of agencies [j10]**

**9.**—(1) In relation to adoption agencies, regulations under section 8 may make provision as to—

- (a) the persons who are fit to work for them for the purposes of their functions relating to adoption;
- (b) the fitness of premises;
- (c) the management and control of their operations;
- (d) the number of persons, or persons of any particular type, working for the purposes of those functions;
- (e) the management and training of persons working for the purposes of those functions,
- (f) the keeping of information.

(2) Regulations made by virtue of subsection (1)(a) may, in particular, make provision for prohibiting persons from working in prescribed positions unless they are registered in, or in a particular part of, the register maintained under section 3 of the Health and Personal Social Services Act (Northern Ireland) 2001.

(3) In relation to appropriate voluntary organisations, regulations under section 8 may—

- (a) make provision as to the persons who are fit to manage an appropriate voluntary organisation, including provision prohibiting persons from doing so unless they are registered as mentioned in subsection (2);
- (b) impose requirements as to the financial position of an appropriate voluntary organisation;
- (c) make provision requiring the appointment of a manager;

- (d) make provision for securing the welfare of children placed by the appropriate voluntary organisation, including provision as to the promotion and protection of their health.
- (4) Regulations under section 8 may make provision as to the conduct of appropriate voluntary organisations, and may in particular make provision—
- (a) as to the facilities and services to be provided by an appropriate voluntary organisation;
  - (b) as to the keeping of accounts;
  - (c) as to the notification to the RQIA of events occurring in premises used for the purposes of an appropriate voluntary organisation;
  - (d) as to the giving of notice to the RQIA of periods during which the manager of an appropriate voluntary organisation proposes to be absent, and specifying the information to be given in such a notice;
  - (e) as to the making of adequate arrangements for the running of an appropriate voluntary organisation during a period when its manager is absent;
  - (f) as to the giving of notice to the RQIA of any intended change in the identity of the manager;
  - (g) as to the giving of notice to the RQIA of changes in the ownership of an appropriate voluntary organisation or the identity of its officers;
  - (h) requiring the payment of a prescribed fee to the RQIA in respect of any notification required to be made by virtue of paragraph (g) in respect of a change of ownership;
  - (i) requiring arrangements to be made for dealing with complaints made by or on behalf of those seeking, or receiving, any of the services provided by an appropriate voluntary organisation and requiring the appropriate voluntary organisation or manager to take steps for publicising the arrangements.

**Fees [j11]**

- 10.—(1) Regulations under section 8 may prescribe—
- (a) the fees which may be charged by adoption agencies in respect of the provision of services to persons providing facilities as part of the Adoption Service (including Adoption Services in Great Britain, the Channel Islands and the Isle of Man);
  - (b) the fees which may be paid by adoption agencies to persons providing or assisting in providing such facilities.
- (2) Regulations under section 8 may prescribe the fees which may be charged by adoption authorities in respect of the provision of prescribed facilities of the Adoption Service where the following conditions are met.
- (3) The conditions are that the facilities are provided in connection with—
- (a) the adoption of a child brought into the United Kingdom for the purpose of adoption; or
  - (b) a Convention adoption, an overseas adoption or an adoption effected under the law of a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man.

(4) Regulations under section 8 may prescribe the fees which may be charged by adoption agencies in respect of the provision of counselling, where the counselling is provided in connection with the disclosure of information in relation to a person's adoption.

**Independent review of qualifying determinations of adoption agencies [j12]**

**11.**—(1) Regulations under section 8 may establish a procedure under which any person in respect of whom a qualifying determination has been made by an adoption agency may apply to the Department for a review of that determination by a panel constituted by the Department.

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

(3) The regulations may include provision as to—

- (a) the duties and powers of a panel;
- (b) the administration and procedures of a panel;
- (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment);
- (d) the payment of fees to members of a panel;
- (e) the duties of adoption agencies in connection with reviews conducted under the regulations;
- (f) the monitoring of any such reviews.

(4) Regulations made by virtue of subsection (3)(e) may impose a duty to pay to the Department such sum as the Department may determine.

(5) The Department must secure that, taking one financial year with another, the aggregate of the sums which become payable to the Department under regulations made by virtue of subsection (4) does not exceed the cost to the Department of performing independent review functions.

(6) The Department may make an arrangement with an organisation under which independent review functions are performed by the organisation on behalf of the Department.

(7) If the Department makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any directions given by the Department.

(8) The arrangement may include provision for payments to be made to the organisation by the Department.

(9) Payments made by the Department in accordance with such provision are to be taken into account in determining (for the purpose of subsection (5)) the cost to the Department of performing independent review functions.

(10) In this section—

“independent review function” means a function conferred or imposed on the Department by regulations made under this section;

“organisation” includes a public body and a private or voluntary organisation.

*Supplemental*

**Information concerning adoption [j13]**

12.—(1) Each adoption agency must give the Department any statistical or other general information which the Department requires about—

- (a) the agency's performance of all or any of its functions relating to adoption;
- (b) the children and other persons in relation to whom it has exercised those functions.

(2) The information required to be given under this section must be given at the times, and in the form, directed by the Department.

(3) The Department may publish abstracts of the information given under this section.

**Inspection of premises, etc. [j15]**

13.—(1) The Department may arrange for any premises in which—

- (a) a child is living with a person with whom the child has been placed by an adoption agency, or
- (b) a child in respect of whom a notice of intention to adopt has been given under section 40 is, or will be, living,

to be inspected.

(2) The Department may require an adoption agency—

- (a) to give the Department any information; or
- (b) to allow the Department to inspect any records (in whatever form they are held),

relating to the discharge of any of the adoption agency's functions in relation to adoption which the Department specifies.

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

(4) A person inspecting any premises under subsection (1) may—

- (a) visit the child there; and
- (b) make any examination into the state of the premises and the treatment of the child there which the person thinks fit.

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

(6) A person authorised to inspect any premises or records under this section may—

- (a) enter the premises for that purpose at any reasonable time; and
- (b) require any person to give the person so authorised any reasonable assistance which the person so authorised may require.

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



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

### CHAPTER 3

#### PLACEMENT FOR ADOPTION AND ADOPTION ORDERS

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

#### **Placement for adoption by agencies[j18]**

**14.**—(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), keep 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 15 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 an adoption 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 keep 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.

(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) keeping 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) Reference 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 15 or a placement order.

(7) This section is subject to sections 26 to 31 (removal of children placed by adoption agencies).

(8) In subsection (4) “adoption order” means an adoption order made under the law of any part of the United Kingdom.

#### **Placing children with parental consent [j19]**

**15.**—(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 that 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.

(5) This section is subject to section 51 (parental etc. consent).

**Advance consent to adoption [j20]**

**16.—**(1) A parent or guardian of a child who consents to the child being placed for adoption by an adoption agency under section 15 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 the person 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 the consent.

(6) This section is subject to section 51 (parental etc. consent).

**Placement orders [j21]**

**17.—**(1) A placement order is an order made by the court authorising an adoption authority to place a child for adoption with any prospective adopters who may be chosen by the authority.

(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 Article 50(2) of the Children Order (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 adoption authority and has not withdrawn that consent; or
- (b) that the parent's or guardian's consent should be dispensed with.

(4) Subsection (3) is subject to section 51 (parental etc, consent).

(5) A placement order continues in force until—

- (a) it is revoked under section 20;
- (b) an adoption order is made in respect of the child; or
- (c) the child marries, forms a civil partnership or attains the age of 18 years.

(6) In subsection (5) "adoption order" means an adoption order made under the law of any part of the United Kingdom.

**Applications for placement orders [j22]**

**18.—**(1) An adoption authority must apply to the court for a placement order in respect of a child if—

- (a) the child is placed for adoption by the adoption authority or is being provided with accommodation by it;
- (b) no adoption agency is authorised to place the child for adoption;
- (c) the child has no parent or guardian or the authority considers that the conditions in Article 50(2) of the Children Order are met; and
- (d) the adoption authority is 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
- (b) a child is subject to a care order and the appropriate authority is not authorised to place the child for adoption,

the appropriate authority must apply to the court for a placement order if the appropriate authority is 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 authority is authorised to place the child for adoption under section 15,

the appropriate authority may apply to the court for a placement order.

- (4) If an adoption authority—

- (a) is under a duty to apply to the court for a placement order in respect of a child, or
- (b) has applied for a placement order in respect of a child and the application has not been disposed of,

the child is looked after by that adoption 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.

- (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 authority—

- (a) in relation to a care order, is the 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 authority which makes the application.

(8) In subsection (5) “adoption order” means an adoption order made under the law of any part of the United Kingdom.

### **Varying placement orders [j23]**

**19.**—(1) The court may vary a placement order so as to substitute another adoption authority for the adoption authority authorised by the order to place the child for adoption.

(2) The variation may only be made on the joint application of both adoption authorities.

### **Revoking placement orders [j24]**

**20.**—(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 adoption 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 adoption 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 adoption authority,
- the child may not without the court's leave be placed for adoption under the order.

**Parental responsibility [j25]**

- 21.**—(1) This section applies while—
- (a) a child is placed for adoption under section 15 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.
- (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.

**Contact [j26]**

- 22.**—(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 Children Order ceases to have effect.
- (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 the Children Order; 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 Children Order 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 the child 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.

(5) In this section "provision for contact under the Children Order" means a contact order under Article 8 of the Children Order or an order under Article 53 of that Order (parental contact with children in care).

### **Contact: supplementary [j27]**

**23.**—(1) An order under section 22—

(a) has effect while the adoption agency is authorised to place the child for adoption or the child is placed for adoption; but

(b) 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—

(a) it is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and

(b) 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—

(a) the steps to be taken by an agency which has exercised its power under subsection (2);

(b) the circumstances in which, and conditions subject to which, the terms of any order under section 22 may be departed from by agreement between the agency and any person for whose contact with the child the order provides;

(c) 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—

(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 22 may provide for contact on any conditions the court considers appropriate.

### **Further consequences of placement [j28]**

**24.**—(1) Where a child is placed for adoption under section 15 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 44;
  - (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 the guardian has obtained the court's leave under subsection (3) or (5) of that section.
- (2) The following subsections apply where—
- (a) a child is placed for adoption under section 15 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.
- (3) A person must not remove the child from the United Kingdom (whether or not the child is in Northern Ireland) unless the court gives leave or each parent or guardian of the child gives written consent.
- (4) Subsection (3) does not prevent the removal of the child from the United Kingdom for a period of less than one month by a person who provides the child's home.
- (5) A person must not cause the child to be known by a new surname unless the court gives leave or each parent or guardian of the child or the adoption agency gives written consent.
- (6) The adoption agency must not give its consent under subsection (5) unless it has given at least 14 days' notice of its intention to do so—
- (a) every person with parental responsibility for the child; and
  - (b) if the agency considers that the child has sufficient understanding, the child.
- (7) Subsection (5) is subject to any direction of the court.
- (8) The court may vary or revoke a direction under subsection (5)—
- (a) on the application of—
    - (i) any person mentioned in subsection (6)(a);
    - (ii) if the child appears to the court to have sufficient understanding, the child; or
    - (iii) the adoption agency; or
  - (b) in any family proceedings in which a question arises in relation to the welfare of the child without an application having been made.
- (9) In subsection (8)(b) “family proceedings” has the same meaning as in the Children Order.

**Further consequences of placement orders [j29]**

- 25.—**(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 Article 8(1) of the Children Order, 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 44 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 the person is a guardian of the child, has obtained the court's leave under section 44(5).

(6) Article 14A(7) of the Children Order 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) Article 14C(1)(b) of the Children Order (special guardianship: parental responsibility) has effect subject to any determination under section 21(4);
- (b) paragraphs (3) and (4) of that Article (special guardianship: removal of child from UK etc.) do not apply.

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

**General prohibitions on removal [j30]**

**26.—**(1) Where—

- (a) a child is placed for adoption by an adoption agency under section 15; 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 an authority; and
- (b) the authority has 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 15 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 27 to 29 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 Northern Ireland.

(6) This group of sections does not affect the exercise by any authority or other person of any power conferred by any statutory provision, other than Article 22(2) of the Children Order (removal of children from accommodation provided under Article 21).

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

(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.

### **Recovery by parent etc. where child not placed or is a baby [j31]**

**27.**—(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 15 if consent to placement under that section had not been withdrawn.

(2) If any parent or guardian (“P or G”) of the child informs the agency that P or G wishes the child to return to P or G, the agency must secure the child’s return to P or G within the period of 14 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 (“P or G”) of the child informs the agency that P or G wishes the child to return to P or G,

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 secure the child's return 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) The agency must secure the child's return to the parent or guardian in question before the end of the period of seven days from the day on which the child returns to the agency.

**Recovery by parent etc. where child placed and consent withdrawn [j32]**

**28.**—(1) This section applies where—

- (a) a child is placed for adoption by an adoption agency under section 15; and
- (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 ("P or G") of the child informs the agency that P or G wishes the child to return to P or G—

- (a) the agency must give notice of P's or G's wish to the prospective adopters; and
- (b) the prospective adopters must secure the return of the child to the agency within the period of seven 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) The agency must secure the return of the child to the parent or guardian in question within the period of seven days beginning with the day on which the child returns to the agency.

(5) Where a notice under subsection (2) is given, but—

- (a) before the notice was given, an application for an 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 secure the return of the child to the agency unless the court so orders.

(6) In subsection (5) references to an application for an adoption order are references to an application for an adoption order under the law of any part of the United Kingdom.

**Recovery by parent etc. where child placed and placement order refused [j33]**

**29.**—(1) This section applies where—

- (a) a child is placed for adoption by an adoption authority under section 15;
- (b) the adoption authority has applied for a placement order and the application has been refused; and
- (c) any parent or guardian (“P or G”) of the child informs the adoption authority that P or G wishes the child to return to P or G.

(2) The prospective adopters must secure the return of the child to the adoption authority on a date determined by the court.

(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) The adoption authority must return the child to the parent or guardian in question within the period of seven days beginning with the day on which the child returns to the adoption authority.

**Placement orders: prohibition on removal [j34]**

**30.**—(1) Where a placement order in respect of a child—

- (a) is in force; or
- (b) has been revoked, but the child has not returned from the prospective adopters or remains in any accommodation provided by an adoption authority,

a person (other than the adoption authority) may not remove the child from the prospective adopters or from accommodation provided by the adoption 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 secure the child’s return to the adoption 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 return to a parent or guardian, the adoption authority must secure the child’s return to the parent or guardian before the end of the period of seven days—

- (a) from the day on which the child returns to the adoption authority; or
- (b) where the child is in accommodation provided by the adoption authority, from the day on which the revocation of the placement order comes into force.

(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 adoption authority or other person of a power conferred by any statutory provision, other than Article 22(2) of the Children Order.

(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 Northern Ireland.

**Return of child in other cases [j35]**

**31.**—(1) Where a child is placed for adoption by an adoption agency and the prospective adopters give notice to the agency of their wish that the child return to the agency to end the placement, 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 end the placement.

(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, secure the child's return 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 secure the child's return 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, 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 secure the child's return to the agency unless the court so orders.

(6) This section applies whether or not the child in question is in Northern Ireland.

(7) In subsection (5)(b) "adoption order" means an adoption order made under the law of any part of the United Kingdom.

*Removal of children in non-agency cases*

**Restrictions on removal [j36]**

**32.—**(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 38(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 33 to 36).

(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 38(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 secure the child's return 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 Northern Ireland.

(8) The reference in subsection (1) to a child placed by an adoption agency includes a child placed by an adoption agency or Scottish adoption agency within the meaning of the Adoption and Children Act 2002.

**Applications for adoption [j37]**

**33.** If section 32(1)(a) applies, the following persons may remove the child—

- (a) a person who has the court's leave;

- (b) an adoption authority or other person in the exercise of a power conferred by any statutory provision other than Article 22(2) of the Children Order.

**Adoption authority foster parents [j38]**

**34.**—(1) This section applies if the child’s home is with adoption authority foster parents.

(2) If—

- (a) the child’s home has been 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 38(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) an adoption authority or other person in the exercise of a power conferred by any statutory provision, other than Article 22(2) of the Children Order.

(4) If subsection (2) does not apply but—

- (a) the child’s home has been 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) subject to subsection (6), a person with parental responsibility for the child who is exercising the power in Article 22(2) of the Children Order;
- (b) a person who has the court’s leave;
- (c) an adoption authority or other person in the exercise of a power conferred by any statutory provision, other than Article 22(2) of the Children Order.

(6) The power mentioned in subsection (5)(a) is not exercisable by the person there mentioned for such period as the court may, on an application made by the adoption authority, order.

**Partners of parents [j39]**

**35.**—(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) an adoption authority or other person in the exercise of a power conferred by any statutory provision other than Article 22(2) of the Children Order.

(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) an adoption authority or other person in the exercise of a power conferred by any statutory provision other than Article 22(2) of the Children Order.

**Other non-agency cases [j40]**

**36.**—(1) In any case where sections 33 to 35 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 38(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) an adoption authority or other person in the exercise of a power conferred by any statutory provision, other than Article 22(2) of the Children Order.

*Breach of restrictions on removal***Recovery orders [j41]**

**37.**—(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 27(4), 28(2), 29(2), 30(3) or 31(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.

(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 the person 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 offences under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

*Preliminaries to adoption*

**Child to live with adopters before application [j42]**

**38.**—(1) An application for an adoption order may not be made unless—

- (a) if subsection (2) applies, the condition in that subsection is met;
- (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's home must have been 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's home must have been with the applicant or, as the case may be, applicants at all times during the period of one year preceding the application.

(4) If the applicants are 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 adoption authority within whose area the child's home is.
- (8) In this section and sections 39 and 40(1)—
- (a) references to an adoption agency include an adoption agency or Scottish adoption agency within the meaning of the Adoption and Children Act 2002;
  - (b) references to a child placed for adoption by an adoption agency are to be read accordingly.

### **Reports where child placed by agency [j43]**

**39.**—(1) 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.

(2) Arrangements may be made by an adoption agency which has placed a child for its functions in relation to that child with respect to—

- (a) the report on the suitability of the applicants for adoption; and
- (b) any other matters relevant to the operation of section 1,

to be discharged by another adoption agency.

### **Notice of intention to adopt [j44]**

**40.**—(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 adoption 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 38 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 the person has the court's leave to apply for an adoption order.

(5) On receipt of a notice of intention to adopt, the appropriate adoption 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 an adoption authority receives a notice of intention to adopt in respect of a child who the adoption authority knows was (at any time before the notice was given) looked after by another adoption authority, the first adoption authority must, not more than seven days after the receipt of the notice, inform the other adoption authority in writing that it has received the notice.

(8) Where—

(a) an adoption authority has placed a child with any persons otherwise than as prospective adopters; and

(b) the persons give notice of intention to adopt,

the adoption authority is not to be treated as keeping the child with them as prospective adopters for the purposes of section 14(1)(b).

(9) In this section, references to the appropriate adoption authority, in relation to any proposed adopters, are—

(a) in prescribed cases, references to the prescribed adoption authority;

(b) in any other case, references to the adoption authority for the area in which, at the time of giving the notice of intention to adopt, the proposed adopters have their home.

#### *Suitability of adopters*

#### **Regulations as to matters to be taken into account[j45]**

**41.**—(1) Regulations under section 8 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.

(3) Nothing in subsection (1) or (2) affects the application of section 1.

#### **Regulations as to matters not to be taken into account [j45A]**

**42.**—(1) Regulations under section 8 may provide that an adoption agency in determining, or making any report in respect of, the suitability of any persons to adopt a child must not take into account offences of a prescribed description.

(2) Nothing in subsection (1) affects the application of section 1.

#### *The making of adoption orders*

#### **Adoption orders [j46]**

**43.**—(1) An adoption order is an order made by the court on an application under section 47 or 48 giving parental responsibility for a child to the adopters or adopter.

(2) The making of an adoption order operates to extinguish—

- (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 Children Order or the Children Act 1989 (c. 41);
- (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 48(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.

### **Conditions for making adoption orders [j47]**

**44.—**(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 51 (parental etc. consent).

(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 16 or under section 20 of the Adoption and Children Act 2002 or section 31(2) of the Adoption and Children (Scotland) Act 2007 (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—

(a) the child is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted; or

(b) an adoption agency (within the meaning of the Adoption and Children Act 2002) is authorised to place the child for adoption under section 19 of that Act or an order under section 21 of that Act.

(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—

(a) who is or has been married or a civil partner; or

(b) who has attained the age of 19 years.

(9) In this section, "Scottish permanence order" means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267)).

### **Restrictions on making adoption orders [j48]**

**45.**—(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—

(a) it appears to the court that, because of a change in circumstances or for any other reason, it is proper to hear the application; or

(b) the court which refused the previous application directed otherwise.

(2) This subsection applies to any application—

(a) for an adoption order under the law of any part of the United Kingdom; or

(b) for an order for adoption made in the Isle of Man or any of the Channel Islands.

**Applications for adoption [j49]**

**46.**—(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 47 or 48 and one of the following conditions is met.

(2) The first condition is that—

- (a) at least one of the couple (in the case of an application under section 47);  
or
- (b) the applicant (in the case of an application under section 48),

is domiciled in a part of the United Kingdom, or in any of the Channel Islands or in the Isle of Man.

(3) The second condition is that—

- (a) both of the couple (in the case of an application under section 47) have, or
- (b) the applicant (in the case of an application under section 48) has,

been habitually resident in a part of the United Kingdom, or in any of the Channel Islands or in the Isle of Man 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.

**Adoption by couple [j50]**

**47.**—(1) An adoption order may be made on the application of a couple where both of them have attained the age of 21.

(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.

**Adoption by one person [j51]**

**48.**—(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 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 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.
- (4) 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
  - (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.
- (5) 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;
  - (b) by virtue of the provisions specified in subsection (6) 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.
- (6) The provisions referred to in subsection (5)(b) are—
- (a) section 28 of the Human Fertilisation and Embryology Act 1990 (c. 37) (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).

*Post-adoption contact*

**Post-adoption contact [j51A]**

- 49.**—(1) This section applies where—
- (a) an adoption agency has placed or was authorised to place a child for adoption; and
  - (b) the court is making or has made an adoption order in respect of the child.
- (2) When making the adoption order or at any time afterwards, the court may make an order under this section—
- (a) requiring the person in whose favour the adoption order is or has been made to allow the child to visit or stay with the person named in the order under this section, or for the person named in that order and the child otherwise to have contact with each other; or
  - (b) prohibiting the person named in the order under this section from having contact with the child.
- (3) The following people may be named in an order under this section—

- (a) any person who (but for the child's adoption) would be related to the child by blood (including half-blood), marriage or civil partnership;
  - (b) any former guardian of the child;
  - (c) any person who had parental responsibility for the child immediately before the making of the adoption order;
  - (d) any person who was entitled to make an application for an order under section 22 in respect of the child (contact with children placed or to be placed for adoption) by virtue of subsection (3)(c), (d) or (e) of that section;
  - (e) any person with whom the child has lived for a period of at least one year.
- (4) An application for an order under this section may be made by—
- (a) a person who has applied for the adoption order or in whose favour the adoption order is or has been made;
  - (b) the child; or
  - (c) any person who has obtained the court's leave to make the application.
- (5) In deciding whether to grant leave under subsection (4)(c), the court must consider—
- (a) any risk there might be of the proposed application disrupting the child's life to such an extent that the child would be harmed by it (within the meaning of the Children Order);
  - (b) the applicant's connection with the child; and
  - (c) any representations made to the court by—
    - (i) the child; or
    - (ii) a person who has applied for the adoption order or in whose favour the adoption order is or has been made.
- (6) When making an adoption order, the court may on its own initiative make an order of the type mentioned in subsection (2)(b).
- (7) The period of one year mentioned in subsection (3)(e) need not be continuous but must not have begun more than five years before the making of the application.
- (8) Where this section applies, an order under Article 8 of the Children Order may not make provision about contact between the child and any person who may be named in an order under this section.

**Orders under section 49: supplementary [j51B]**

- 50.**—(1) An order under section 49—
- (a) may contain directions about how it is to be carried into effect;
  - (b) may be made subject to any conditions the court thinks appropriate;
  - (c) may be varied or revoked by the court on an application by the child, a person in whose favour the adoption order was made or a person named in the order; and
  - (d) has effect until the child's 18th birthday, unless revoked.
- (2) Subsection (3) applies to proceedings—

- (a) on an application for an adoption order in which—
    - (i) an application is made for an order under section 49; or
    - (ii) the court indicates that it is considering making such an order on its own initiative;
  - (b) on an application for an order under section 49;
  - (c) on an application for such an order to be varied or revoked.
- (3) The court must (in the light of any rules of court made by virtue of subsection (4))—
- (a) draw up a timetable with a view to determining without delay whether to make, (or as the case may be) vary or revoke an order under section 49; and
  - (b) give directions for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.
- (4) Rules of court may—
- (a) specify periods within which specified steps must be taken in relation to proceedings to which subsection (3) applies; and
  - (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that the court makes determinations about orders under section 49 without delay.

*Placement and adoption: general*

**Parental etc. consent [j52]**

**51.**—(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 is incapable of giving consent, or
- (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 16, 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 identify of the persons in whose favour the order will be made.

(6) “Parent” (except in subsections (9) and (10)) means a parent having parental responsibility.



(7) Consent under section 15 or 16 must be given in the form prescribed by rules of court, and the rules of court may prescribe forms in which a person giving consent under any other provision of this Part may do so (if the person wishes).

(8) Consent given under section 15 or 16 must be withdrawn—

- (a) in the form prescribed by rules of court; or
- (b) by notice given to the agency.

(9) Subsection (10) applies if—

- (a) an agency has placed a child for adoption under section 15 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.

### **Modification of Children Order in relation to adoption [j53]**

**52.—**(1) Where—

- (a) an adoption authority is authorised to place a child for adoption; or
- (b) a child who has been placed for adoption by an authority is less than six weeks old,

regulations may provide for the following provisions of the Children Order to apply with modifications, or not to apply, in relation to the child.

(2) The provisions are—

- (a) Article 26(2)(b), (c) and (d) and (3)(b) (duty to ascertain wishes and feelings of certain persons);
- (b) Articles 29 and 39 (promoting contact with parents and parents' obligation to contribute towards maintenance).

(3) Where an appropriate voluntary organisation is authorised to place a child for adoption or a child who has been placed for adoption by an appropriate voluntary organisation is less than six weeks old, regulations may provide—

- (a) for Article 76 of the Children Order to have effect in relation to the child whether or not the child is accommodated by or on behalf of the organisation;
- (b) for paragraphs (2)(b) to (d) and (3)(b) of that Article (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 Articles 38 to 43 of the Children Order (contributions towards maintenance of children looked after by an authority) 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 an adoption order under the law of any part of the United Kingdom.

#### **Disclosing information to prospective adopters [j54]**

**53.** Regulations under section 8 may require adoption agencies in prescribed circumstances to disclose in accordance with the regulations prescribed information to prospective adopters.

#### **Revocation of adoptions on legitimation [j55]**

**54.—**(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 county court, the reference to the court by which the order was made includes a reference to a court held for the same division.

#### *Disclosure of information about a person's adoption*

#### **Information to be kept about a person's adoption [j56]**

**55.—**(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 56 to 64), any information kept by an adoption agency by virtue of subsection (1)(a) is referred to as section 55 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.

#### **Restrictions on disclosure of protected etc. information [j57]**

**56.—**(1) Any section 55 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 78(5) and any other information which would enable the adopted person to obtain a certified copy of the record of the adopted person's 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 the person) 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.

#### **Disclosure of other information [j58]**

**57.**—(1) This section applies to any section 55 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.

#### **Offence [j59]**

**58.** Regulations may provide that an appropriate voluntary organisation which discloses any information in contravention of section 56 is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Disclosing information to adopted adult [j60]**

**59.**—(1) This section applies to an adopted person who has attained the age of 18 years.

(2) The adopted person has the right, on request, to receive from the appropriate adoption agency—

- (a) any information which would enable the person to obtain a certified copy of the record of the person's birth, unless the High Court orders otherwise;
- (b) any prescribed information disclosed to the adopters by the agency by virtue of section 53.

(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, on 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.

(6) In subsection (4) “prescribed” means prescribed by rules of court.

**Disclosing protected information about adults [j61]**

**60.**—(1) This section applies where—

- (a) a person applies to the appropriate adoption agency for protected information to be disclosed to the person; 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 that person.

(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 59(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 56(6).

**Disclosing protected information about children [j62]**

**61.**—(1) This section applies where—

- (a) a person applies to the appropriate adoption agency for protected information to be disclosed to the person; 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 the child's 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 that person's 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 59(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 56(6).

### **Counselling [j63]**

**62.**—(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 56(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 to an adoption agency.

(4) The regulations may require the following persons to provide counselling for the purposes of arrangements under subsection (2)—

- (a) an adoption authority;
- (b) an appropriate voluntary organisation.

**Other provision to be made by regulations [j64]**

**63.**—(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 in subsections (2) to (6).

(2) Regulations may prescribe—

- (a) the manner in which agreements made by virtue of section 56(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 made by the Department of Finance 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 made by the Department of Finance may require the Registrar General—

- (a) to disclose to any person (including an adopted person) on request any information which the person requires to assist the person 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 made by the Department of Finance may provide for the payment of a prescribed fee in respect of the disclosure in prescribed circumstances of any information in pursuance of section 59, 60 or 61; but an adopted person (“A”) may not be required to pay any fee in respect of any information disclosed to A in relation to any person who (but for A's adoption) would be related to A by blood (including half-blood), marriage or civil partnership.

(6) Regulations made by the Department of Finance may provide for the payment of a prescribed fee by an adoption agency obtaining information under subsection (4)(b).

(7) In subsections (3) to (6) “prescribed” means prescribed by regulations made by the Department of Finance.

**Sections 55 to 64: interpretation [j65]**

**64.** In this group of sections—

“appropriate adoption agency”, in relation to an adopted person or to information relating to that person's 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 that person's adoption;
  - (b) in any other case, the adoption authority to which notice of intention to adopt was given;
- “prescribed” means, except in sections 59(4) and 63(3) to (7), prescribed by regulations;
- “regulations” means, except in section 63(3) to (7), regulations under section 8.

## CHAPTER 4

### STATUS OF ADOPTED CHILDREN

#### **Meaning of adoption in Chapter 4 [j66]**

**65.**—(1) In this Chapter “adoption” means—

- (a) adoption by an adoption order made under the law of any part of the United Kingdom;
- (b) adoption by an order made in the Isle of Man or any of the Channel Islands;
- (c) an adoption effected under the law of a Convention country outside the United Kingdom, the Channel Islands and the Isle of Man, and certified in pursuance of Article 23(1) of the Convention (referred to in this Act as a “Convention adoption”);
- (d) an overseas adoption; or
- (e) an adoption recognised by the law of Northern Ireland and effected under the law of any other country.

(2) But references in this Chapter to adoption do not include an adoption effected before the day on which this Chapter comes into operation (referred to in this Chapter as “the appointed day”).

(3) Any reference in a statutory provision to an adopted person within the meaning of this Chapter includes a reference to an adopted child within the meaning of Part 5 of the Adoption (Northern Ireland) Order 1987.

#### **Status conferred by adoption [j67]**

**66.**—(1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.

(2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by—

- (a) two persons who are a couple; or
- (b) one of a couple under section 48(2),

is to be treated as the child of the relationship of the couple in question.

(3) An adopted person—

(a) if adopted by one of a couple under section 48(2), is to be treated in law as not being the child of any person other than the adopter and the other one of the couple; and

(b) in any other case, is to be treated in law, subject to subsection (4), as not being the child of any person other than the adopters or adopter;

but this subsection does not affect any reference in this Act to a person's natural parent or to any other natural relationship.

(4) In the case of a person adopted by one of the person's natural parents as sole adoptive parent, subsection (3)(b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.

(5) This section has effect from the date of the adoption.

(6) Subject to the provisions of this Chapter and Schedule {s4}, this section—

(a) applies for the interpretation of statutory provisions or instruments passed or made before as well as after the adoption, and so applies subject to any contrary indication; and

(b) has effect as respects things done, or events occurring, on or after the adoption.

(7) This section—

(a) does not apply to a statutory provision or other instrument passed or made before 1st October 1989 in so far as it contains a disposition of property; and

(b) does not apply to any public general Act in its application to any disposition of property in a statutory provision or other instrument passed or made before 1st October 1989.

### **Adoptive relatives [j68]**

**67.**—(1) A relationship existing by virtue of section 66 may be referred to as an adoptive relationship, and—

(a) an adopter may be referred to as an adoptive parent or (as the case may be) as an adoptive father or adoptive mother;

(b) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree.

(2) Subsection (1) does not affect the interpretation of any reference not qualified by the word “adoptive”, to a relationship.

(3) A reference (however expressed) to the adoptive mother and father of a child adopted by—

(a) two persons of the same sex who are a couple; or

(b) a partner of the child's parent, where the couple are of the same sex, is to be read as a reference to the child's adoptive parents.



**Rules of interpretation for instruments concerning property [j69]**

**68.**—(1) The rules of interpretation contained in this section apply (subject to any contrary indication and to Schedule {s4}) to any instrument so far as it contains a disposition of property.

(2) In applying section 66(1) and (2) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition is to be interpreted as if—

- (a) the adopted person had been born on the date of adoption;
- (b) two or more people adopted on the same date had been born on that date in the order of their actual births;

but this does not affect any reference to a person's age.

(3) Examples of phrases in wills on which subsection (2) can operate are—

1. Children of A “living at my death or born afterwards”.
2. Children of A “living at my death or born afterwards before any one of such children for the time being in existence attains a vested interest and who attain the age of 21 years”.
3. As in example 1 or 2, but referring to grandchildren of A instead of children of A.
4. A for life “until A has a child”, and then to A's child or children.

*Note.* Subsection (2) will not affect the reference to the age of 21 years in example 2.

(4) Section 66(3) does not prejudice—

- (a) any qualifying interest; or
- (b) any interest expectant (whether immediately nor not) upon a qualifying interest.

“Qualifying interest” means an interest vested in possession in the adopted person before the adoption.

(5) Where it is necessary to determine for the purposes of a disposition of property effected by an instrument whether a woman can have a child—

- (a) it must be presumed that once a woman has attained the age of 55 years she will not adopt a person after execution of the instrument; and
- (b) if she does so, then (in spite of section 66) that person is not to be treated as her child or (if she does so as one of a couple) as the child of the other one of the couple for the purposes of the instrument.

(6) In this section, “instrument” includes a private Act settling property, but not any other statutory provision.

(7) This section does not apply to a statutory provision or other instrument passed or made before 1st October 1989.

**Dispositions depending on date of birth [j70]**

**69.**—(1) Where a disposition depends on the date of birth of a person who was born illegitimate and who is adopted by one of the natural parents as sole adoptive parent, section 68(2) does not affect entitlement by virtue of Part 2 of the Family

Law Reform (Northern Ireland) Order 1977 or Article 22 of the Wills and Administration Proceedings (Northern Ireland) Order 1994 (dispositions of property).

(2) Subsection (1) applies for example where—

- (a) a testator (“T”) dies in 2015 bequeathing a legacy to T’s eldest grandchild living at a specified time;
- (b) T’s unmarried daughter has a child in 2016 who is the first grandchild;
- (c) T’s married son has a child in 2017;
- (d) subsequently T’s unmarried daughter adopts her child as sole adoptive parent.

In that example the status of the daughter’s child as T’s eldest grandchild is not affected by the events described in paragraph (c) and (d).

### **Property devolving with peerages etc. [j71]**

**70.**—(1) An adoption does not affect the descent of any peerage or dignity or title of honour.

(2) An adoption does not affect the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour.

(3) Subsection (2) applies only if and so far as a contrary intention is not expressed in the instrument, and has effect subject to the terms of the instrument.

### **Protection of trustees and personal representatives [j72]**

**71.**—(1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether any adoption has been effected or revoked if that fact could affect entitlement to the property.

(2) A trustee or personal representative is not liable to any person by reason of a conveyance or distribution of the property made without regard to any such fact if the trustee or personal representative has not received notice of the fact before the conveyance or distribution.

(3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

### **Meaning of disposition [j73]**

**72.**—(1) This section applies for the purposes of this Chapter.

(2) A disposition includes the conferring of a power of appointment and any other disposition of an interest in or right over property (including a disposition by the creating of an entailed interest); and in this subsection a power of appointment includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.

(3) This Chapter applies to an oral disposition as if contained in an instrument made when the disposition was made.

(4) The date of death of a testator is the date at which a will or codicil is to be regarded as made.

(5) The provisions of the law of intestate succession applicable to the estate of a deceased person are to be treated as if contained in an instrument executed by the deceased (while of full capacity) immediately before the deceased died.

**Miscellaneous [j74]**

**73.**—(1) Section 66 does not apply for the purposes of Articles 68 and 69 of the Sexual Offences (Northern Ireland) Order 2008 (sex with an adult relative) but nothing in this subsection is to be read as preventing the application of section 66 for the purposes of Article 68(3)(a) or 69(3)(a) of that Order.

(2) Section 66 does not apply for the purposes of Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 or Schedule 12 to the Civil Partnership Act 2004 (prohibited degrees of relationship).

(3) Section 66 does not apply for the purposes of any provision of—

- (a) the British Nationality Act 1981;
- (b) the Immigration Act 1971;
- (c) any instrument having effect under a provision within paragraph (a) or (b);  
or
- (d) any other provision of the law for the time being in force which determines British citizenship, British overseas territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.

**Pensions [j75]**

**74.** Section 66(3) does not affect entitlement to a pension which is payable to or for the benefit of a person and is in payment at the time of the person's adoption.

**Insurance [j76]**

**75.**—(1) Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, then—

- (a) the rights and liabilities under the policy are by virtue of the adoption transferred to the adoptive parents, and
- (b) for the purposes of the statutory provisions relating to such societies and companies, the adoptive parents are to be treated as the person who took out the policy.

(2) Where the adoption is effected by an order made by virtue of section 48(2), the references in subsection (1) to the adoptive parents are to be read as references to the adopter and the adopter's partner.

CHAPTER 5  
REGISTERS

*Adopted Children Register, etc.*

**Adopted Children Register [j77]**

76.—(1) The Registrar General must continue to maintain at the General Register Office a register, to be called the Adopted Children Register.

(2) The Adopted Children Register is not to be open to public inspection or search, subject to regulations under this section.

(3) No entries may be made in the Adopted Children Register other than entries—

- (a) directed to be made in it by adoption orders; or
- (b) required to be made under Schedule 1.

(4) A certified copy of an entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the General Register Office, is to be received as evidence of the adoption to which it relates without further or other proof.

(5) Where an entry in the Adopted Children Register contains a record—

- (a) of the date of birth of the adopted person; or
- (b) of the country, or the registration district, of the birth of the adopted person,

a certified copy of the entry is also to be received, without further or other proof, as evidence of that date, or country or registration district, (as the case may be) in all respects as if the copy were a certified copy of an entry in the registers of live-births.

(6) Schedule 1 (registration of adoptions and the amendment of adoption orders) has effect.

(7) Regulations make provision for any person to have access, on payment of the prescribed fee, to any information contained in the Adopted Children Register.

(8) Regulations under subsection (7) may provide that the relevant period must have expired in relation to the information.

(9) In subsection (8) “the relevant period” in relation to the adoption of a child means the expiration of the period of 100 years from the date of the child's birth or such other period as may be prescribed.

(10) Regulations under subsection (7) may provide for the Registrar General—

- (a) to make arrangements with any person for the purpose of providing access to information as mentioned in that subsection; and
- (b) for that purpose to transfer information to that person subject to conditions (including conditions as to the making of payments by that person to the Registrar General).

**Searches and copies [j78]**

77.—(1) The Registrar General must continue to maintain at the General Register Office an index of the Adopted Children Register.

(2) Any person may—

(a) search the index;

(b) have a certified copy of any entry in the Adopted Children Register.

(3) But a person is not entitled to have a certified copy of an entry in the Adopted Children Register relating to an adopted person who has not attained the age of 18 years unless the applicant has provided the Registrar General with the prescribed particulars.

(4) The terms, conditions and regulations as to payment of fees, and otherwise, applicable under the Births and Deaths Registration (Northern Ireland) Order 1976 in respect of—

(a) searches in indexes kept in the General Register Office;

(b) the supply from that Office of certified copies of entries in the registers of live-births,

also apply in respect of searches, and supplies of certified copies, under subsection (2).

**Connections between the register and birth records [j79]**

78.—(1) The Registrar General must make traceable the connection between any entry in the registers of live-births or other records which has been marked “Adopted” and any corresponding entry in the Adopted Children Register.

(2) Information kept by the Registrar General for the purposes of subsection (1) is not to be open to public inspection or search.

(3) Any such information, and any other information which would enable an adopted person to obtain a certified copy of the record of the adopted person’s birth, may only be disclosed by the Registrar General in accordance with this section.

(4) In relation to a person adopted before the appointed day the court may, in exceptional circumstances, order the Registrar General to give any information mentioned in subsection (3) to a person.

(5) On an application made in the prescribed manner by the appropriate adoption agency in respect of an adopted person a record of whose birth is kept by the Registrar General, the Registrar General must give the agency any information relating to the adopted person which is mentioned in subsection (3).

(6) In relation to a person adopted before the appointed day, Schedule 2 applies instead of subsection (5).

(7) On an application made in the prescribed manner by an adopted person a record of whose birth is kept by the Registrar General and who—

(a) is under the age of 18 years; and

(b) intends to be married or form a civil partnership,

the Registrar General must inform the applicant whether or not it appears from information contained in the registers of live-births or other records that the

applicant and the intended spouse or civil partner may be within the prohibited degrees of relationship.

(8) Before the Registrar General gives any information by virtue of this section, any prescribed fee which the Registrar General has demanded must be paid.

(9) In this section—

“appointed day” means the day appointed for the commencement of sections 55 to 64,

“appropriate adoption agency” has the same meaning as in section 64;

“prohibited degrees of relationship” is to be construed in accordance with Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 and Schedule 1 to the Civil Partnership Act 2004.

*Adoption Contact Register*

**Adoption Contact Register [j80]**

**79.**—(1) The Registrar General must maintain at the General Register Office in accordance with regulations a register in two Parts to be called the Adoption Contact Register.

(2) Part 1 of the register is to contain the prescribed information about adopted persons who have given the prescribed notice expressing their wishes as to making contact with their relatives.

(3) The Registrar General may only make an entry in Part 1 of the register for an adopted person—

- (a) a record of whose birth is kept by the Registrar General;
- (b) who has attained the age of 18 years; and
- (c) who the Registrar General is satisfied has such information as is necessary to enable the person to obtain a certified copy of the record of the person’s birth.

(4) Part 2 of the register is to contain the prescribed information about persons who have given the prescribed notice expressing their wishes, as relatives of adopted persons, as to making contact with those persons.

(5) The Registrar General may only make an entry in Part 2 of the register for a person—

- (a) who has attained the age of 18 years; and
- (b) who the Registrar General is satisfied is a relative of an adopted person and has such information as is necessary to enable the relative to obtain a certified copy of the record of the adopted person’s birth.

(6) Regulations may provide for—

- (a) the disclosure of information contained in one Part of the register to persons for whom there is an entry in the other Part;
- (b) the payment of prescribed fees in respect of the making or alteration of entries in the register and the disclosure of information contained in the register.

**Adoption Contact Register: supplementary [j81]**

**80.**—(1) The Adoption Contact Register is not to be open to public inspection or search.

(2) In section 79, “relative”, in relation to an adopted person, means any person who (but for the adopted person’s adoption) would be related to the adopted person by blood (including half-blood), marriage or civil partnership.

(3) The Registrar General must not give any information entered in the register to any person except in accordance with subsection (6)(a) of that section or regulations made by virtue of section 63(4)(b).

**Interpretation [j82]**

**81.**—(1) In this Chapter—

“prescribed” means prescribed by regulations;

“records” includes certified copies kept by the Registrar General of entries in any register of births;

“registers of live-births” means the registers of live-births made under the Births and Deaths Registration (Northern Ireland) Order 1976;

“regulations” means regulations made by the Department of Finance.

(2) Any register, record or index maintained under this Chapter may be maintained in any form the Registrar General considers appropriate; and references (however expressed) to entries in such a register, or to their amendment, marking or cancellation, are to be read accordingly.

## CHAPTER 6

## ADOPTIONS WITH A FOREIGN ELEMENT

*Bringing children into and out of the United Kingdom***Restriction on bringing children in [j83]**

**82.**—(1) This section applies where a person who is habitually resident in the United Kingdom, any of the Channel Islands or the Isle of Man (the “British resident”)—

(a) brings, or causes another to bring, a child who is habitually resident outside the United Kingdom, any of the Channel Islands or the Isle of Man into the United Kingdom for the purpose of adoption by the British resident; or

(b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of twelve months ending with that time.

The references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to a child adopted, by the British resident and another person.

(2) But this section does not apply if the child is intended to be adopted under a Convention adoption order.

(3) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outside the United

Kingdom, the Channel Islands and the Isle of Man, whether or not the adoption is—

- (a) an adoption within the meaning of Chapter 4; or
- (b) a full adoption (within the meaning of section 87(3)).

(4) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—

- (a) to apply to an adoption agency (including an adoption agency in Great Britain) in the prescribed manner for an assessment of the person's suitability to adopt the child, and
- (b) to give the agency any information it may require for the purpose of the assessment.

(5) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.

(6) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may—

- (a) provide for any provision of Chapter 3 to apply with modifications or not to apply;
- (b) if notice of intention to adopt has been given, impose functions in respect of the child on the authority to which the notice was given.

(7) If a person (“P”) brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, P is guilty of an offence if—

- (a) P has not complied with any requirement imposed by virtue of subsection (4); or
- (b) any condition required to be met by virtue of subsection (5) is not met, before that time, or before any later time which may be prescribed.

(8) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.

### **Giving parental responsibility prior to adoption abroad [j84]**

**83.**—(1) The High Court may, on an application by persons who the court is satisfied intend to adopt a child under the law of a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man, make an order giving parental responsibility for the child to them.

(2) An order under this section may not give parental responsibility to persons who the court is satisfied meet those requirements as to domicile, or habitual residence, in Northern Ireland which have to be met if an adoption order is to be made in favour of those persons.

(3) An order under this section may not be made unless any prescribed requirements are satisfied.



(4) An application for an order under this section may not be made unless at all times during the preceding ten weeks the child's home was with the applicant or, in the case of an application by two people, both of them.

(5) Section 43(2) to (4) have effect in relation to an order under this section as they have effect in relation to adoption orders.

(6) Regulations may provide for any provision of this Act which refers to adoption orders to apply, with or without modifications, to orders under this section.

**Restriction on taking children out [j85]**

**84.**—(1) A child who—

- (a) is a Commonwealth citizen; or
- (b) is habitually resident in the United Kingdom,

must not be removed from the United Kingdom to a place outside the Channel Islands and the Isle of Man for the purpose of adoption unless the condition in subsection (2) is met.

(2) The condition is that—

- (a) the prospective adopters have parental responsibility for the child by virtue of an order under section 83; or
- (b) the child is removed under the authority of an order under section 84 of the Adoption and Children Act 2002 or section 59 of the Adoption and Children (Scotland) Act 2007.

(3) Removing a child from the United Kingdom includes arranging to do so; and the circumstances in which a person arranges to remove a child from the United Kingdom include those where the person—

- (a) enters into an arrangement for the purpose of facilitating such a removal of the child;
- (b) initiates or takes part in any negotiations of which the purpose is the conclusion of an arrangement within paragraph (a); or
- (c) causes another person to take any step mentioned in paragraph (a) or (b).

An arrangement includes an agreement (whether or not enforceable).

(4) A person who removes a child from the United Kingdom in contravention of subsection (1) is guilty of an offence.

(5) A person is not guilty of an offence under subsection (4) of causing a person to take any step mentioned in paragraph (a) or (b) of subsection (3) unless it is proved that the person knew or had reason to suspect that the step taken would contravene subsection (1).

But this subsection only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(6) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.

(7) In any proceedings under this section—

- (a) a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible, upon proof that the officer or the deponent cannot be found in the United Kingdom, as evidence of the matters stated in it; and
- (b) it is not necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.

**Power to modify sections 82 and 84 [j86]**

**85.**—(1) Regulations may provide for section 82 not to apply if—

- (a) the adopters or (as the case may be) prospective adopters are natural parents, natural relatives or guardians of the child in question (or one of them is); or
  - (b) the British resident in question is a partner of a parent of the child;
- and any prescribed conditions are met.

(2) Regulations may provide for section 84(1) to apply with modifications, or not to apply, if—

- (a) the prospective adopters are parents, relatives or guardians of the child in question (or one of them is); or
  - (b) the prospective adopter is a partner of a parent of the child;
- and any prescribed conditions are met.

*Overseas adoptions*

**Overseas adoptions [j87]**

**86.**—(1) In this Act, “overseas adoption”—

- (a) means an adoption of a prescribed description, being a description of adoptions effected under the law of any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man; but
- (b) does not include a Convention adoption.

(2) Regulations may prescribe the requirements that ought to be met by an adoption of any description effected after the commencement of the regulations for it to be an overseas adoption for the purposes of this Act.

(3) At any time when regulations under this section have effect, the Department must exercise its powers under this section so as to secure that subsequently effected adoptions of any description are not overseas adoptions for the purposes of this Act if the Department considers that they are not likely within a reasonable time to meet the prescribed requirements.

(4) In this section references to this Act include the Adoption (Northern Ireland) Order 1987.

(5) Regulations under this section may contain provision as to the manner in which evidence of any overseas adoption may be given.

(6) In this section “adoption” means an adoption of a child or of a person who was a child at the time the adoption was applied for.

*Miscellaneous*

**Modification of section 66 for Hague Convention adoptions [j88]**

**87.**—(1) If the High Court is satisfied, on an application under this section, that each of the following conditions is met in the case of a Convention adoption, it may direct that section 66(3) does not apply, or does not apply to any extent specified in the direction.

(2) The conditions are—

- (a) that under the law of the country in which the adoption was effected, the adoption is not a full adoption;
- (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention);
- (c) that it would be more favourable to the adopted child for a direction to be given under subsection (1).

(3) A full adoption is an adoption by virtue of which the child is to be treated in law as not being the child of any person other than the adopters or adopter.

(4) In relation to a direction under this section and an application for it, Articles 35 and 36 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (declarations under Part 5 of that Order as to status) apply as they apply in relation to a direction under that Part and an application for such a direction.

**Annulment etc. of overseas or Hague Convention adoptions [j89]**

**88.**—(1) The High Court may, on an application under this subsection, by order annul a Convention adoption or Convention adoption order on the ground that the adoption is contrary to public policy.

(2) The High Court may, on an application under this subsection—

- (a) by order provide for an overseas adoption or a determination under section 90 to cease to be valid on the ground that the adoption or determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case; or
- (b) decide the extent, if any, to which a determination under section 90 has been affected by a subsequent determination under that section.

(3) The High Court may, in any proceedings in that court, decide that an overseas adoption or a determination under section 90 is to be treated, for the purposes of those proceedings, as invalid on either of the grounds mentioned in subsection (2)(a).

(4) Subject to subsections (1) to (3), the validity of a Convention adoption, Convention adoption order or overseas adoption or a determination under section 90 cannot be called in question in proceedings in any court in Northern Ireland.

**Section 88: supplementary [j90]**

**89.**—(1) Any application for an order under section 88 or a decision under subsection (2)(b) or (3) of that section must be made in the manner, and within any period, prescribed by rules of court.

(2) No application may be made under section 88(1) in respect of an adoption unless immediately before the application is made—

- (a) the person adopted; or
- (b) the adopters or adopter,

habitually reside in Northern Ireland.

(3) In deciding in pursuance of section 88 whether such an authority as is mentioned in section 90 was competent to entertain a particular case, a court is bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to entertain the case.

### **Overseas determinations and orders [j91]**

**90.**—(1) Subsection (2) applies where any authority of a Convention country (other than the United Kingdom) or of the Channel Islands, the Isle of Man or any British overseas territory has power under the law of that country or territory—

- (a) to authorise, or review the authorisation of, an adoption order made in that country or territory; or
- (b) to give or review a decision revoking or annulling such an order or a Convention adoption.

(2) If the authority makes a determination in the exercise of that power, the determination is to have effect for the purpose of effecting, confirming or terminating the adoption in question or, as the case may be, confirming its termination.

(3) Subsection (2) is subject to section 88 and to any subsequent determination having effect under that subsection.

### **Power to charge [j91A]**

**91.**—(1) This section applies to adoptions to which—

- (a) section 82 applies; or
- (b) regulations made under section 1 of the Adoption (Inter-country Aspects) Act (Northern Ireland) 2001 apply.

(2) The Department may charge a fee to adopters for services provided or to be provided by the Department in relation to adoptions to which this section applies.

(3) The Department may determine the level of fee as it sees fit, and may in particular—

- (a) charge a flat fee; and
- (b) waive a fee.

(4) But the Department must secure that, taking one financial year with another, the income from fees under this section does not exceed the total cost to the Department of providing the services in relation to which the fees are imposed.

(5) In this section references to adoptions and adopters include prospective adoptions and prospective adopters.

CHAPTER 7  
MISCELLANEOUS

*Restrictions*

**Restriction on arranging adoptions etc. [j92]**

**92.**—(1) A person who is neither an adoption agency nor acting in pursuance of an order of the High Court must not take any of the steps mentioned in subsection (2).

(2) The steps are—

- (a) asking a person other than an adoption agency to provide a child for adoption;
- (b) asking a person other than an adoption agency to provide prospective adopters for a child;
- (c) offering to find a child for adoption;
- (d) offering a child for adoption to a person other than an adoption agency;
- (e) handing over a child to any person other than an adoption agency with a view to the child's adoption by that or another person;
- (f) receiving a child handed over to the person in contravention of paragraph (e);
- (g) entering into an agreement with any person for the adoption of a child, or for the purpose of facilitating the adoption of a child, where no adoption agency is acting on behalf of the child in the adoption;
- (h) initiating or taking part in negotiations of which the purpose is the conclusion of an agreement within paragraph (g);
- (i) causing another person to take any of the steps mentioned in paragraphs (a) to (h).

(3) Subsection (1) does not apply to a person taking any of the steps mentioned in paragraphs (d), (e), (g), (h) and (i) of subsection (2) if the following condition is met.

(4) The condition is that—

- (a) the prospective adopters are parents, relatives or guardians of the child (or one of them is); or
- (b) the prospective adopter is the partner of a parent of the child.

(5) References to an adoption agency in subsection (2) include a prescribed person outside the United Kingdom exercising functions corresponding to those of an adoption agency, if the functions are being exercised in prescribed circumstances in respect of the child in question.

(6) The Department may by order make any amendments of subsections (1) to (4), and any consequential amendments of this Act, which the Department considers necessary or expedient.

(7) In this section “agreement” includes an arrangement (whether or not enforceable).

**Offence of breaching restrictions under section 92 [j93]**

**93.**—(1) A person who contravenes section 92(1) is guilty of an offence; and, if that person is an adoption society, the person who manages the society is also guilty of the offence.

(2) A person (“P”) is not guilty of an offence under subsection (1) of taking the step mentioned in paragraph (f) of section 92(2) unless it is proved that P knew or had reason to suspect that the child was handed over to the person in contravention of paragraph (e) of that subsection.

(3) A person (“P”) is not guilty of an offence under subsection (1) of causing a person to take any of the steps mentioned in paragraphs (a) to (h) of section 92(2) unless it is proved that P knew or had reason to suspect that the step taken would contravene the paragraph in question.

(4) But subsections (2) and (3) only apply if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £10,000, or both.

**Restriction on reports [j94]**

**94.**—(1) A person who is not within a prescribed description may not, in any prescribed circumstances, prepare a report for any person about the suitability of a child for adoption or of a person to adopt a child or about the adoption, or placement for adoption, of a child.

(2) If a person (“P”)—

(a) contravenes subsection (1); or

(b) causes a person to prepare a report, or submits to any person a report which has been prepared, in contravention of that subsection,

P is guilty of an offence.

(3) If a person who works for an appropriate voluntary organisation—

(a) contravenes subsection (1); or

(b) causes a person to prepare a report, or submits to any person a report which has been prepared, in contravention of that subsection,

the person who manages the appropriate voluntary organisation is also guilty of the offence.

(4) A person (“P”) is not guilty of an offence under subsection (2)(b) unless it is proved that P knew or had reason to suspect that the report would be, or had been, prepared in contravention of subsection (1); but this subsection only applies if sufficient evidence is adduced to raise an issue as to whether P had the knowledge or reason mentioned.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

**Prohibition of certain payments [j95]**

**95.**—(1) This section applies to any payment (other than an excepted payment) which is made for or in consideration of—

- (a) the adoption of a child;
- (b) giving any consent required in connection with the adoption of a child;
- (c) removing from the United Kingdom a child who is a Commonwealth citizen, or is habitually resident in the United Kingdom, to a place outside the United Kingdom, the Channel Islands and the Isle of Man for the purpose of adoption;
- (d) a person (who is neither an adoption agency nor acting in pursuance of an order of the High Court) taking any step mentioned in section 92(2);
- (e) preparing, causing to be prepared or submitting a report the preparation of which contravenes section 94(1).

(2) In this section and section 96, removing a child from the United Kingdom has the same meaning as in section 84.

(3) Any person who—

- (a) makes any payment to which this section applies;
- (b) agrees or offers to make any such payment; or
- (c) receives or agrees to receive or attempts to obtain any such payment,

is guilty of an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £10,000, or both.

**Excepted payments [j96]**

**96.**—(1) A payment is an excepted payment if it is made by virtue of, or in accordance with provision made by or under this Act, the Adoption and Children Act 2002 or the Adoption and Children (Scotland) Act 2007.

(2) A payment is an excepted payment if it is made to an adoption agency by—

- (a) a parent or guardian of a child; or
- (b) a person who adopts or proposes to adopt a child;

in respect of expenses reasonably incurred by the adoption agency in connection with the adoption or proposed adoption of the child.

(3) A payment is an excepted payment if it is made in respect of any legal or medical expenses incurred or to be incurred by any person in connection with an application to a court which the person has made or proposes to make for an adoption order, a placement order, or an order under section 22, 49 or 83.

(4) A payment made as mentioned in section 95(1)(c) is an excepted payment if—

- (a) the condition in section 84(2) is met; and
- (b) the payment is made in respect of the travel and accommodation expenses reasonably incurred in removing the child from the United Kingdom for the purpose of adoption.

**Sections 92 to 96: interpretation [j97]**

97. In sections 92 to 96—

“adoption agency” includes an adoption agency in Great Britain;

“payment” includes reward; and

references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the United Kingdom, the Channel Islands and the Isle of Man.

*Information*

**Pre-commencement adoptions: information [j98]**

98.—(1) Regulations under section 8 may make provision for the purpose of—

(a) assisting persons adopted before the appointed day who have attained the age of 18 to obtain information in relation to their adoption; and

(b) facilitating contact between such persons and their relatives.

(2) For that purpose the regulations may confer functions on—

(a) adoption agencies; and

(b) the Registrar General.

(3) For that purpose the regulations may—

(a) authorise or require any person mentioned in subsection (2) to disclose information;

(b) authorise or require the disclosure of information contained in records of any court kept under the Public Records Act (Northern Ireland) 1923,

and may impose conditions on the disclosure of information, including conditions restricting its further disclosure.

(4) The regulations may authorise the charging of prescribed fees by any person mentioned in subsection (2) or in respect of the disclosure of information under subsection (3)(b).

(5) An authorisation or requirement to disclose information by virtue of subsection (3)(a) has effect in spite of any restriction on the disclosure of information in Chapter 5.

(6) The making of regulations by virtue of subsections (2) to (4) which relate to the Registrar General requires the approval of the Department of Finance.

(7) In this section—

“appointed day” means the day appointed for the commencement of sections 55 to 64;

“relative”, in relation to an adopted person (“A”), means any person who (but for A’s adoption) would be related to A by blood (including half-blood), marriage or civil partnership.



*Proceedings*

**Proceedings for offences [j99]**

**99.** Proceedings for an offence by virtue of section 8 or 58 may not, without the consent of the Director of Public Prosecutions for Northern Ireland, be taken by any person other than the Regulation and Quality Improvement Authority.

**Appeals [j100]**

**100.**—(1) An appeal lies to the High Court against—

- (a) the making by a county court of any order under this Act; or
- (b) any refusal by a county court to make such an order,

as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 (original civil jurisdiction) and the appeal were brought under Article 60 of that Order (ordinary appeals in civil cases).

(2) On an appeal under subsection (1), the High Court may make such orders as may be necessary to give effect to its determination of the appeal.

(3) Where an order is made under subsection (2), the High Court may also make such incidental or consequential orders as appear to it to be just.

(4) Any order of the High Court made on an appeal under subsection (1) (other than one directing that an application be re-heard by the county court) is to be treated, for the purposes of—

- (a) the enforcement of the order; and
- (b) any power to vary, revive or discharge orders,

as if it were an order of the county court from which the appeal was brought and not an order of the High Court.

(5) Subsections (1) to (4) are subject to paragraphs (14) and (15) of Article 166 of the Children Order.

**Privacy [j101]**

**101.**—(1) Rules of court may make provision for the court to sit in private in any proceedings under this Act.

(2) In Schedule 2 to the Administration of Justice Act 1960, in sub-paragraph (1) of the entry relating to section 12, in subsection (1)(a)(ii) after “1995” there shall be inserted the words “or the Adoption and Children Act (Northern Ireland) 2017”.

(3) Paragraphs (2) to (9) of Article 170 of the Children Order have effect for the purposes of this Act as if references in those paragraphs to that Order included references to this Act.

(4) This section is without prejudice to—

- (a) the generality of any other power to make rules of court; or
- (b) any other power of the court to sit in private.

*Guardians ad litem*

**Guardians ad litem [j102]**

**102.**—(1) Rules of court must provide for the appointment in prescribed cases of a guardian ad litem for the purposes of any relevant application.

(2) Rules of court may provide for the guardian ad litem—

- (a) to act on behalf of the child upon the hearing of any relevant application, with the duty of safeguarding the interests of the child in the prescribed manner;
- (b) where the court so requests, to prepare a report on matters relating to the welfare of the child in question;
- (c) to perform prescribed functions.

(3) A report prepared in pursuance of the rules of court on matters relating to the welfare of a child must—

- (a) deal with prescribed matters (unless the court orders otherwise); and
- (b) be made in the manner required by the court.

(4) A person who—

- (a) in the case of an application for the making, varying or revocation of a placement order, is employed by the adoption authority which made the application;
- (b) in the case of an application for an adoption order in respect of a child who was placed for adoption, is employed by the adoption agency which placed the child; or
- (c) is within a prescribed description,

is not to be appointed under subsection (1).

(5) In this section, “relevant application” means an application for—

- (a) the making, varying or revocation of a placement order;
- (b) the making of an order under section 22, or the varying or revocation of such an order;
- (c) the making of an adoption order, or
- (d) the making of an order under section 83.

(6) Rules may make provision as to the assistance which the court may require a guardian ad litem to give to it.

(7) In subsections (1) to (4) “prescribed” means prescribed by rules of court.

(8) The Department may by regulations provide that guardians ad litem appointed under this section must be selected from persons employed or approved for that purpose by such special agency or other public body as may be prescribed.

(9) Subsection (8) is not to be taken to prejudice the power of the Lord Chief Justice to confer or impose duties on the Official Solicitor under section 75(2) of the Judicature (Northern Ireland) Act 1978.

(10) The regulations may, in particular, make provision—

- (a) for the employment or approval of persons for the purposes of this section by such special agency or other public body as may be prescribed;

- (b) as to the qualifications for appointment as a guardian ad litem;
- (c) as to the training to be given to guardians ad litem or to persons with a view to their appointment as guardians ad litem; and
- (d) for monitoring the work of guardians ad litem.

(11) The Department may, with the approval of the Department of Finance, make such grants as the Department considers appropriate with respect to expenditure incurred under regulations made under subsection (8).

### **Right of access to adoption agency records [j103]**

**103.**—(1) Where a guardian ad litem has been appointed to act under section 102(1), the guardian ad litem has the right at all reasonable times to examine and take copies of any records of, or held by, an adoption agency which were compiled in connection with the making, or proposed making, by any person of any application under this Part in respect of the child concerned.

(2) Where a guardian ad litem takes a copy of any record which the guardian ad litem is entitled to examine under this section, that copy or any part of it is admissible as evidence of any matter referred to in any—

- (a) report which the guardian ad litem makes to the court in the proceedings in question; or
- (b) evidence which the guardian ad litem gives in those proceedings.

(3) Subsection (2) has effect regardless of any statutory provision or rule of law which would otherwise prevent the record in question being admissible in evidence.

### *Evidence*

#### **Evidence of consent [j104]**

**104.**—(1) If a document signifying any consent which is required by this Part to be given is witnessed in accordance with rules of court, it is to be admissible in evidence without further proof of the signature of the person by whom it was executed.

(2) A document signifying any such consent which purports to be witnessed in accordance with rules of court is to be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

### *Orders made in Great Britain, etc.*

#### **Effect of certain Scottish orders and provisions [j105]**

**105.**—(1) A Scottish adoption order has effect in Northern Ireland as it has in Scotland, but as if references to the parental responsibilities and the parental rights in relation to a child were to parental responsibility for the child.

(2) A Scottish permanence order which includes provision granting authority for the child to be adopted has the same effect in Northern Ireland as it has in Scotland, but as if references to the parental responsibilities and the parental rights in relation to a child were to parental responsibility for the child.

(3) Any person who contravenes any of the provisions of the Adoption and Children (Scotland) Act 2007 mentioned in subsection (4) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale or both.

(4) The provisions are—

- (a) section 20 (restrictions on removal: child placed for adoption);
- (b) section 21 (restrictions on removal: notice of intention to adopt given);
- (c) section 22 (restrictions on removal: application for adoption order pending).

(5) Orders made under section 24 of the Adoption and Children (Scotland) Act 2007 (return of child removed in breach of certain provisions) are to have effect in Northern Ireland as if they were orders of the High Court under section 37 of this Act.

(6) In this section—

“Scottish adoption order” includes an order under section 25 of the Adoption (Scotland) Act 1978 (c. 28) (interim adoption orders);

“Scottish permanence order” means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267)).

#### **Effect of certain orders made in England and Wales [j106]**

**106.**—(1) The following have effect in Northern Ireland as they have effect in England and Wales—

- (a) an adoption order within the meaning of section 46(1) of the Adoption and Children Act 2002;
- (b) an order made under section 21 of that Act (placement orders), and the variation or revocation of such an order under section 23 or 24 of that Act;
- (c) an order under section 26 of that Act (contact);
- (d) an order under section 41 of that Act (recovery orders).

(2) Any person who contravenes any of the provisions of the Adoption and Children Act 2002 mentioned in subsection (3) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale or both.

(3) The provisions are—

- (a) section 30 (general prohibitions on removal);
- (b) section 34 (placement orders: prohibitions on removal);
- (c) section 36 (restrictions on removal).

#### **Use of adoption records from Great Britain, etc. [j107]**

**107.** Any document which is receivable as evidence of any matter—

- (a) in Scotland under section 56(1) or (2) of the Adoption and Children (Scotland) Act 2007;
- (b) in England and Wales under section 77(4) and (5) of the Adoption and Children Act 2002; or
- (c) in the Isle of Man or any of the Channel Islands under a statutory provision corresponding to section 76(3) of this Act,

is also receivable as evidence of that matter in Northern Ireland.

### **Channel Islands and the Isle of Man [j108]**

**108.**—(1) Regulations may provide—

- (a) for a reference in any provision of this Act to an order of a court to include an order of a court in the Isle of Man or any of the Channel Islands which appears to the Department to correspond in its effect to the order in question;
- (b) for a reference in any provision of this Act to an adoption agency to include a person who appears to the Department to exercise functions under the law of the Isle of Man or any of the Channel Islands which correspond to those of an adoption agency and for any reference in any provision of this Act to a child placed for adoption by an adoption agency to be read accordingly;
- (c) for a reference in any provision of this Act to a statutory provision (including a provision contained in this Act) to include a provision of the law of the Isle of Man or any of the Channel Islands which appears to the Secretary of State to correspond in its effect to that statutory provision;
- (d) for any reference in any provision of this Act to the United Kingdom or to Great Britain to include the Isle of Man or any of the Channel Islands.

(2) Regulations may modify any provision of this Act, as it applies to any order made, or other thing done, under the law of the Isle of Man or any of the Channel Islands.

### *General*

### **Avoiding delay [j109]**

**109.**—(1) In proceedings in which a question may arise as to whether an adoption order or placement order should be made, or any other question with respect to such an order, the court must (in the light of any rules made by virtue of subsection (2))—

- (a) draw up a timetable with a view to determining such a question without delay; and
- (b) give such directions as it considers appropriate for the purpose of ensuring that the timetable is adhered to.

(2) Rules of court may—

- (a) prescribe periods within which prescribed steps must be taken in relation to such proceedings; and
- (b) make other provision with respect to such proceedings for the purpose of ensuring that such questions are determined without delay.

**Service of notices etc. [j110]**

**110.**—(1) Any notice or information required to be given by virtue of this Act may be given by post.

(2) Section 24 of the Interpretation Act (Northern Ireland) 1954 has effect in relation to this Act as if in subsection (1) the word "registering" were omitted.

**Jurisdiction of courts [j8FM]**

**111.**—(1) In this Act "the court" means the High Court or a county court.

(2) Subsection (1) is subject to any provision made by or under subsection (4) or Schedule 7 to the Children Order.

(3) In paragraphs 1 and 2 of Schedule 7 to the Children Order, after the words "this Order" in each place where they occur there shall be inserted the words "or the Adoption and Children Act (Northern Ireland) 2017".

(4) The Department of Justice may, after consulting the Lord Chief Justice, by order provide for courts of summary jurisdiction to be included among the courts who may hear proceedings under this Part.

(5) Any power to make an order under subsection (4) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under this Act or any other statutory provision.

PART 2

CHILDREN ORDER AMENDMENTS

**Article 8 orders: authority foster parents [j113]**

**112.** In Article 9 of the Children Order (restrictions on making Article 8 orders)—

- (a) in paragraph (3)(c), for the words "three years" there shall be substituted the words "one year"; and
- (b) paragraph (4) shall cease to have effect.

**Duration of residence orders [j114]**

**113.**—(1) The Children Order shall have effect in relation to a child who is looked after by an authority (within the meaning of that Order) as follows.

(2) Article 9(6) (restrictions on making Article 8 orders) shall have effect as if for the words from the beginning to "Article 8 order" there were substituted the words "No court shall make a specific issue order, contact order or prohibited steps order".

(3) Article 179(10) (duration of Article 8 orders), shall have effect as if after the words "Article 8 order" there were inserted the words "other than a residence order".

**Special guardianship [j115]**

**114.**—(1) After Article 14 of the Children Order there shall be inserted the following Articles—

*“Special guardianship*

**Special guardianship orders**

14A.—(1) A “special guardianship order” is an order appointing one or more individuals to be a child’s “special guardian” (or special guardians).

(2) A special guardian—

- (a) must be aged 18 or over; and
- (b) must not be a parent of the child in question,

and paragraphs (3) to (6) are to be read in that light.

(3) The court may make a special guardianship order with respect to any child on the application of an individual who—

- (a) is entitled to make such an application with respect to the child; or
- (b) has obtained the leave of the court to make the application,

or on the joint application of more than one such individual.

(4) Article 9(3) applies in relation to an application for leave to apply for a special guardianship order as it applies in relation to an application for leave to apply for an Article 8 order.

(5) The individuals who are entitled to apply for a special guardianship order with respect to a child are—

- (a) any guardian of the child;
- (b) any individual in whose favour a residence order is in force with respect to the child;
- (c) any individual listed in paragraph (5)(b) or (c) of Article 10 (as read with paragraph (10) of that Article);
- (d) an authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application;
- (e) a relative with whom the child has lived for a period of at least one year immediately preceding the application.

(6) The court may also make a special guardianship order with respect to a child in any family proceedings in which a question arises with respect to the welfare of the child if—

- (a) an application for the order has been made by an individual who falls within paragraph (3)(a) or (b) (or more than one such individual jointly); or
- (b) the court considers that a special guardianship order should be made even though no such application has been made.

(7) No individual may make any application under paragraph (3) or (6) (a) unless, before the beginning of the period of three months ending with the date of the application, the individual has given written notice of intention to make the application—

- (a) if the child in question is being looked after by an authority, to that authority, or
- (b) otherwise, to the authority in whose area the individual is ordinarily resident.

(8) On receipt of such a notice, the authority shall investigate the matter and prepare a report for the court dealing with—

- (a) the suitability of the applicant to be a special guardian;
- (b) such matters (if any) as may be prescribed; and
- (c) any other matter which the authority considers to be relevant.

(9) The court may itself ask an authority to conduct such an investigation and prepare such a report, and the authority must do so.

(10) The authority may make such arrangements as it sees fit for any person to act on its behalf in connection with conducting an investigation or preparing a report referred to in paragraph (8) or (9).

(11) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in paragraph (8).

(12) Paragraphs (8) and (9) of Article 10 apply in relation to special guardianship orders as they apply in relation to Article 8 orders.

(13) This Article is subject to section 25(5) and (6) of the Adoption and Children Act (Northern Ireland) 2017.

#### **Special guardianship orders: making**

14B.—(1) Before making a special guardianship order, the court must consider whether, if the order were made—

- (a) a contact order should also be made with respect to the child; and
- (b) any Article 8 order in force with respect to the child should be varied or discharged.

(2) On making a special guardianship order, the court may also—

- (a) give leave for the child to be known by a new surname;
- (b) grant the leave required by Article 14C(3)(b), either generally or for specified purposes.

#### **Special guardianship orders: effect**

14C.—(1) The effect of a special guardianship order is that while the order remains in force—

- (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and
- (b) subject to any other order in force with respect to the child under this Order, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).

(2) Paragraph (1) does not affect—

- (a) the operation of any statutory provision or rule of law which requires the consent of more than one person with parental responsibility in a matter affecting the child; or
- (b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.



(3) While a special guardianship order is in force with respect to a child, no person may—

- (a) cause the child to be known by a new surname; or
- (b) remove the child from the United Kingdom,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(4) Paragraph (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of the child.

(5) If the child with respect to whom a special guardianship order is in force dies, the special guardian of the child must take reasonable steps to give notice of that fact to—

- (a) each parent of the child with parental responsibility; and
- (b) each guardian of the child,

but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.

(6) This Article is subject to section 25(7) of the Adoption and Children Act (Northern Ireland) 2017.

#### **Special guardianship orders: variation and discharge**

14D.—(1) The court may vary or discharge a special guardianship order on the application of—

- (a) the special guardian (or any of them, if there are more than one);
- (b) any parent or guardian of the child concerned;
- (c) any individual in whose favour a residence order is in force with respect to the child;
- (d) any individual not falling within any of sub-paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;
- (e) the child; or
- (f) an authority designated in a care order with respect to the child.

(2) In any family proceedings in which a question arises with respect to the welfare of a child with respect to whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under paragraph (1).

(3) The following must obtain the leave of the court before making an application under paragraph (1)—

- (a) the child;
- (b) any parent or guardian of the child;
- (c) any step-parent of the child who has acquired, and has not lost, parental responsibility for the child by virtue of Article 7(1A);

(d) any individual falling within paragraph (1)(d) who, immediately before the making of the special guardianship order had, but no longer has, parental responsibility for the child.

(4) Where the person applying for leave to make an application under paragraph (1) is the child, the court may only grant leave if it is satisfied that the child has sufficient understanding to make the proposed application under paragraph (1).

(5) The court may not grant leave to a person falling within paragraph (3)(b), (c) or (d) unless it is satisfied that there has been a change in circumstances since the making of the special guardianship order.

### **Special guardianship orders: supplementary**

14E.—(1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court shall (in the light of any rules made by virtue of paragraph (3))—

- (a) draw up a timetable with a view to determining the question without delay; and
- (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.

(2) Paragraph (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.

(3) The power to make rules of court in paragraph (2) of Article 11 applies for the purposes of this Article as it applies for the purposes of Article 11.

(4) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.

(5) Article 11(7) (apart from sub-paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to Article 8 orders.

### **Special guardianship support services**

14F.—(1) Each authority must make arrangements for the provision within its area of special guardianship support services, which means—

- (a) counselling, advice and information; and
- (b) such other services as are prescribed,

in relation to special guardianship.

(2) The power to make regulations under paragraph (1)(b) is to be exercised so as to secure that authorities provide financial support.

(3) At the request of any of the following persons—

- (a) a child with respect to whom a special guardianship order is in force;
- (b) a special guardian;
- (c) a parent;

(d) any other person who falls within a prescribed description, an authority may carry out an assessment of that person's needs for special guardianship support services (but, if the Department so provides in regulations, the authority must do so if the person is a person of a prescribed description, or if the person's case falls within a prescribed description, or if both the person and the person's case fall within prescribed descriptions).

(4) An authority may, at the request of any other person, carry out an assessment of that person's needs for special guardianship support services.

(5) Where, as a result of an assessment, an authority decides that a person has needs for special guardianship support services, it shall then decide whether to provide any such services to that person.

(6) If—

(a) an authority decides to provide any special guardianship support services to a person; and

(b) the circumstances fall within a prescribed description, the authority shall prepare a plan in accordance with which special guardianship support services are to be provided to that person, and keep the plan under review.

(7) The Department may by regulations make provision about assessments, preparing and reviewing plans, the provision of special guardianship support services in accordance with plans and reviewing the provision of special guardianship support services.

(8) The regulations may in particular make provision—

(a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;

(b) about the way in which a plan is to be prepared;

(c) about the way in which, and the time at which, a plan or the provision of special guardianship support services is to be reviewed;

(d) about the considerations to which an authority is to have regard in carrying out an assessment or review or preparing a plan;

(e) as to the circumstances in which an authority may provide special guardianship support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);

(f) as to the consequences of conditions imposed by virtue of subparagraph (e) not being met (including the recovery of any financial support provided);

(g) as to the circumstances in which this Article may apply to an authority in respect of persons who are outside that authority's area;

(h) as to the circumstances in which an authority may recover from another authority the expenses of providing special guardianship support services to any person.

(9) An authority may provide special guardianship support services (or any part of them) by securing their provision by—

(a) another authority; or

(b) a person within a prescribed description of persons who may provide special guardianship support services,

and may also arrange with another authority or any such person for that other authority or that person to carry out the authority's functions in relation to assessments under this Article.

(10) An authority may carry out an assessment of the needs of any person for the purposes of this Article at the same time as an assessment of his needs is made under any other provision of this Order or under any other statutory provision.

(11) Article 46 (co-operation between authorities and other bodies) applies in relation to the exercise of functions of an authority under this Article as it applies in relation to the exercise of functions of an authority under Part 4.”.

(2) In Article 3 of that Order (child’s welfare to be paramount consideration), in paragraph (4)(b), after the word “discharge” there shall be inserted the words “a special guardianship order or”.

(3) In Article 159 of that Order (appointment of guardians by court), in paragraph (1)—

(a) in sub-paragraph (b), for the words “or guardian” there shall be substituted the words “, guardian or special guardian”; and

(b) at the end of sub-paragraph (b) there shall be added the words—  
“; or

(c) sub-paragraph (b) does not apply, and the child's only or last surviving special guardian dies.”.

(4) In Article 160 of that Order (appointment of guardians by parent or guardian)—

(a) in paragraph (1), at the end there shall be added the words “; and a special guardian of a child may appoint another individual to be the child's guardian in the event of the special guardian’s death”; and

(b) in paragraph (5), at the end of sub-paragraph (b) there shall be added the words “or the person was the child's only (or last surviving) special guardian”.

#### **Ascertainment of children's wishes [j5304]**

**115.**—(1) In Article 18 of the Children Order (general duty of authority to provide social care for children in need, their families and others), after paragraph (4) there shall be inserted the following paragraph—

“(4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on it by this Article, an authority shall, so far as is reasonably practicable and consistent with the child’s welfare—

- (a) ascertain the child's wishes and feelings regarding the provision of those services; and
- (b) give due consideration (having regard to the child's age and understanding) to such wishes and feelings of the child as the authority has been able to ascertain.”.

(2) In Article 21 of the Children Order (provision of accommodation for children: general), in sub-paragraphs (a) and (b) of paragraph (6) after the word “wishes” there shall be inserted the words “and feelings”.

(3) In Article 66 of the Children Order (authority's duty to investigate), after paragraph (5) there shall be inserted the following paragraph—

“(5A) For the purposes of making a determination under this section as to the action to be taken with respect to a child, an authority shall, so far as is reasonably practicable and consistent with the child's welfare—

- (a) ascertain the child's wishes and feelings regarding the action to be taken with respect to the child; and
- (b) give due consideration (having regard to the child's age and understanding) to such wishes and feelings of the child as the authority has been able to ascertain.”.

**Accommodation of children in need, etc. [j116]**

**116.**—(1) In Article 18 of the Children Order (general duty of authority to provide social care for children in need, their families and others), in paragraph (6) (services which may be provided under Article 18), for the words “, in exceptional circumstances, in cash” there shall be substituted the words “in cash and, in the case of a disabled child, providing accommodation in accordance with regulations made by the Department”.

(2) In Article 25 of the Children Order (interpretation), in paragraph (2) (accommodation), before “34C” there shall be inserted “18,”.

**Duty of authorities to promote educational achievement and prevent disruption of education and training [j5204]**

**117.**—(1) In Article 26 of the Children Order (general duty of authority), after paragraph (1) there shall be inserted the following paragraph—

“(1A) The duty of an authority under paragraph (1)(a) to safeguard and promote the welfare of a child looked after by the authority includes in particular a duty to promote the child's educational achievement.”.

(2) In Article 27 of the Children Order (accommodation and maintenance of children), in paragraph (8)—

- (a) at the end of sub-paragraph (a), the word “and” shall cease to have effect;
- (b) at the end of sub-paragraph (b) there shall be added—

“; and

- (c) the child's education or training will not be disrupted.”.

**Authority foster parents [j28A]**

**118.** After Article 28 of the Children Order (regulations under Article 27) there shall be inserted the following Article—

**“Authority foster parents**

28A.—(1) Regulations under section 27(2)(a) may, in particular, also make provision—

- (a) for securing that a child is not placed with an authority foster parent unless that person is approved as an authority foster parent by a panel constituted by the Department;
- (b) establishing a procedure under which any person in respect of whom a qualifying determination has been made may apply to the Department for a review of that determination by a panel constituted by the Department.

(2) A determination is a qualifying determination if—

- (a) it relates to the issue of whether a person should be approved, or should continue to be approved, as an authority foster parent; and
- (b) it is of a prescribed description.

(3) Regulations under paragraph (1) may include provision as to—

- (a) the duties and powers of a panel;
- (b) the administration and procedures of a panel;
- (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment);
- (d) the payment of fees to members of a panel;
- (e) the duties of any person in connection with reviews conducted under the regulations;
- (f) the monitoring of any such reviews.

(4) Regulations made by virtue of subsection (3)(e) may impose a duty to pay to the Department such sum as the Department may determine; but such a duty may not be imposed upon a person who has applied for a review of a qualifying determination

(5) The Department must secure that, taking one financial year with another, the aggregate of the sums which become payable to the Department under regulations made by virtue of subsection (4) does not exceed the cost to the Department of performing independent review functions.

(6) The Department may make an arrangement with an organisation under which independent review functions are performed by the organisation on behalf of the Department.

(7) If the Department makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any directions given by the Department.

(8) The arrangement may include provision for payments to be made to the organisation by the Department.

(9) Payments made by the Department in accordance with such provision are to be taken into account in determining (for the purpose of paragraph (5)) the cost to the Department of performing independent review functions.

(10) In this Article—

“independent review function” means a function conferred or imposed on the Department by regulations made by virtue of paragraph (1) (b);

“organisation” includes a public body and a private or voluntary organisation.”.

### **Inquiries into representations [j117]**

**119.**—(1) In Article 35D of the Children Order (representations: Articles 34B to 35B), after paragraph (1) there shall be inserted the following paragraph—

“(1A) Regulations may be made by the Department imposing time limits on the making of representations under paragraph (1).”.

(2) Article 45 of the Children Order (procedure for considering other representations) shall be amended as follows.

(3) In paragraph (3) (which makes provision as to the persons by whom, and the matters in respect of which, representations may be made), for the words “functions under this Part” there shall be substituted the words “qualifying functions”.

(4) After that paragraph there shall be inserted the following paragraphs—

“(3A) The following are qualifying functions for the purposes of paragraph (3)—

- (a) functions under this Part;
- (b) such functions under Part 5 or 6 as are specified by the Department in regulations.

(3B) The duty under paragraph (3) extends to representations (including complaints) made to the authority by—

- (a) any person mentioned in section 4(1) of the Adoption and Children Act (Northern Ireland) 2017 (persons for whose needs provision is made by the Adoption Service) and any other person to whom arrangements for the provision of adoption support services (within the meaning of that Act) extend;
- (b) any other person the authority considers has sufficient interest in a child who is or may be adopted to warrant that person's representations being considered by the authority,

about the discharge by the authority of such functions under the Adoption and Children Act (Northern Ireland) 2017 as are specified by the Department in regulations.

(3C) The duty under paragraph (3) extends to any representations (including complaints) which are made to the authority by—

- (a) a child with respect to whom a special guardianship order is in force;

- (b) a special guardian or a parent of such a child;
- (c) any other person the authority considers has a sufficient interest in the welfare of such a child to warrant that person's representations being considered by the authority; or
- (d) any person who has applied for an assessment under Article 14F(3) or (4),

about the discharge by the authority of such functions under Article 14F as are specified by the Department in regulations.”.

(5) In paragraph (4) (procedure to require involvement of independent person), at the end there shall be added the words “but this paragraph is subject to paragraph (5A).”.

(6) After that paragraph there shall be inserted the following paragraph—

“(4A) Regulations may be made by the Department imposing time limits on the making of representations under this Article.”.

(7) After paragraph (5) there shall be inserted the following paragraph—

“(5A) Regulations under paragraph (5) may provide that paragraph (4) shall not apply in relation to any consideration or discussion which takes place as part of a procedure for which provision is made by the regulations for the purpose of resolving informally the matters raised in the representations.”.

#### **Review of cases of looked after children [j118]**

**120.** In Article 45 of the Children Order (reviews and representations), in paragraph (2) (regulations as to reviews)—

- (a) in sub-paragraph (e), the words “to consider” shall cease to have effect and after the words “care of the authority” there shall be inserted the words—
  - “(i) to keep the Article 50A plan for the child under review and, if the authority is of the opinion that some change is required, to revise the plan, or make a new plan, accordingly;
  - (ii) to consider”;
- (b) in sub-paragraph (f), the words “to consider” shall cease to have effect and after the words “provided by the authority” there shall be inserted the words—
  - “(i) if there is no plan for the future care of the child, to prepare one;
  - (ii) if there is such a plan for the child, to keep it under review and, if the authority is of the opinion that some change is required, to revise the plan or make a new plan, accordingly;
  - (iii) to consider”.

#### **Advocacy services [j119]**

**121.** After Article 45 of the Children Order there shall be inserted the following Article—



**“Advocacy services**

45A.—(1) Every authority shall make arrangements for the provision of assistance to—

- (a) persons who make or intend to make representations under Article 35D; and
- (b) children who make or intend to make representations under Article 45.

(2) The assistance provided under the arrangements shall include assistance by way of representation.

(3) The arrangements—

- (a) shall secure that a person may not provide assistance if that person is a person who is prevented from doing so by regulations made by the Department; and
- (b) shall comply with any other provision made by the regulations in relation to the arrangements.

(4) The Department may make regulations requiring authorities to monitor the steps that they have taken with a view to ensuring that they comply with regulations made for the purposes of paragraph (3).

(5) Every authority shall give such publicity to their arrangements for the provision of assistance under this Article as it considers appropriate.”.

**Care plans [j121]**

**122.**—(1) In Article 50 of the Children Order (care orders and supervision orders), after paragraph (4) there shall be inserted the following paragraph—

“(4A) A court deciding whether to make a care order—

- (a) is required to consider the permanence provisions of the Article 50A plan for the child concerned, but
- (b) is not required to consider the remainder of the Article 50A plan, subject to Article 53(11).

(4B) For the purposes of paragraph (4A), the permanence provisions of an Article 50A plan are such of the plan's provisions setting out the long-term plan for the upbringing of the child concerned as provide for any of the following—

- (a) the child to live with any parent of the child's or with any other member of, or any friend of, the child's family;
- (b) adoption;
- (c) long-term care not within sub-paragraph (a) or (b).

(4C) The Department may by order amend this Article for the purpose of altering what for the purposes of paragraph (4A) are the permanence provisions of an Article 50A plan.”.

(2) After that Article there shall be inserted the following Article—

**“Care orders: care plans**

50A.—(1) Where an application is made on which a care order might be made with respect to a child, the appropriate authority must, within such time as the court may direct, prepare a plan (“a care plan”) for the future care of the child.

(2) While the application is pending, the authority must keep any care plan prepared by it under review and, if the authority is of the opinion some change is required, revise the plan, or make a new plan, accordingly.

(3) A care plan must give any prescribed information and do so in the prescribed manner.

(4) For the purposes of this Article, the appropriate authority, in relation to a child in respect of whom a care order might be made, is the authority proposed to be designated in the order.

(5) In Article 50(4A) and this Article, references to a care order do not include an interim care order.

(6) A plan prepared, or treated as prepared, under this Article is referred to in this Order as an “Article 50A plan”.

(3) If—

(a) before subsection (2) comes into force, a care order has been made in respect of a child and a plan for the future care of the child has been prepared in connection with the making of the order by the authority designated in the order, and

(b) on the day on which that subsection comes into force the order is in force, or would be in force but for section 25(1),

the plan is to have effect as if made under Article 50A of the Children Order.

(4) In Article 183 of that Order (regulations and orders), in paragraph (2) (orders subject to affirmative resolution), after “18(4)” there shall be inserted “, 50(4C)”.

**Contact: children in care of authority [j7CF]**

**123.**—(1) Article 53 of the Children Order is amended as follows.

(2) In paragraph (1), after the words “subject to the provisions of this Article” there shall be inserted the words “and the authority’s duty under Article 26(1)(a)”.

(3) After paragraph (6) there shall be inserted the following paragraph—

“(6A) Where (by virtue of an order under this Article, or because paragraph (6) applies) an authority is authorised to refuse to allow contact between the child and a person who is mentioned in sub-paragraphs (a) to (c) of Article 29(1), Article 29(1) does not require the authority to endeavour to promote contact between the child and that person.”.

(4) In paragraph (8), before sub-paragraph (a) there shall be inserted the following sub-paragraph—

“(za) what an authority must have regard to in considering whether contact between a child and a person who is mentioned in any of sub-paragraphs (a) to (d) of paragraph (1) is consistent with safeguarding and promoting the child’s welfare;”.

(5) In paragraph (11), after the word “Before” there shall be inserted the words “making, varying or discharging an order under this Article or”.

**Persons authorised to act as guardians ad litem [j60CH]**

**124.**—(1) In Article 60 of the Children Order (representation of child and of the child’s interests in certain proceedings), in paragraph (7) (establishment of panels)—

- (a) for the words “for the establishment of panels of persons from whom” there shall be substituted the words “that”;
- (b) at the end there shall be added the words “from persons employed or approved for that purpose by such special agency or other public body as may be prescribed”.

(2) In paragraph (9) of that Article (regulations)—

- (a) in sub-paragraph (a) for the words from “constitution” to the end there shall be substituted the words “employment or approval of persons for the purposes of this Article by such special agency or other public body as may be prescribed”; and
- (b) sub-paragraph (b) shall cease to have effect.

**Interests of children in proceedings [j122]**

**125.** In Article 60 of the Children Order (specified proceedings), in paragraph (6), after sub-paragraph (h) there shall be inserted the following sub-paragraph—

“(hh) on an application for the making of a special guardianship order with respect to a child who is the subject of a care order;”.

PART 3

MISCELLANEOUS AND SUPPLEMENTARY

*Northern Ireland Adoption and Children Act Register*

**Northern Ireland Adoption and Children Act Register [j125]**

**126.**—(1) The Regional Board must establish and maintain a register, to be called the Northern Ireland Adoption and Children Act Register, containing—

- (a) prescribed information about children who are suitable for adoption and prospective adopters who are suitable to adopt a child;
- (b) prescribed information about persons included in the register in pursuance of paragraph (a) in respect of things occurring after their inclusion.

(2) For the purpose of giving assistance in finding persons with whom children may be placed for purposes other than adoption, regulations under this section may—

- (a) provide for the register to contain information about such persons and the children who may be placed with them; and
- (b) apply any of the other provisions of this group of sections (that is, this section and sections 127 to 131), with or without modifications.

(3) The register is not to be open to public inspection or search.

(4) Regulations under this section may make provision about the retention of information in the register.

(5) Information is to be kept in the register in any form the Regional Board considers appropriate.

#### **Use of an organisation to establish the register [j126]**

**127.**—(1) The Regional Board may make an arrangement with an organisation under which any function of the Regional Board under section 126 of establishing and maintaining the register, and disclosing information entered in, or compiled from information entered in, the register to any person is performed wholly or partly by the organisation on the Regional Board's behalf.

(2) The arrangement may include provision for payments to be made to the organisation by the Regional Board.

(3) If the Regional Board makes an arrangement under this section with an organisation, the organisation is to perform the functions exercisable by virtue of this section in accordance with any directions given by the Regional Board.

(4) The Regional Board must not exercise its powers under subsection (1) or (3) without the consent of the Department.

(5) References in this group of sections to the registration organisation are to any organisation for the time being performing functions in respect of the register by virtue of arrangements under this section.

#### **Use of an organisation as an agency for payments [j127]**

**128.**—(1) Regulations may authorise an organisation with which an arrangement is made under section 127 to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.

(2) The organisation is to perform the functions exercisable by virtue of this section in accordance with any directions given by the Regional Board.

(3) The Regional Board must not exercise its powers under subsection (2) without the consent of the Department.

#### **Supply of information for the register [j128]**

**129.**—(1) Regulations may require adoption agencies to give prescribed information to the Regional Board or the registration organisation for entry in the register.

(2) Information is to be given to the Regional Board or the registration organisation when required by the regulations and in the prescribed form and manner.

(3) Regulations may require an agency giving information which is entered on the register to pay a prescribed fee to the Regional Board or the registration organisation.

(4) But an adoption agency is not to disclose any information to the Regional Board or the registration organisation—

- (a) about prospective adopters who are suitable to adopt a child, or persons who were included in the register as such prospective adopters, without their consent;
  - (b) about children suitable for adoption, or persons who were included in the register as such children, without the consent of the prescribed person.
- (5) Consent under subsection (4) is to be given in the prescribed form.

**Disclosure of information [j129]**

**130.**—(1) Information entered in the register, or compiled from information entered in the register, may only be disclosed under subsection (2) or (3).

(2) Prescribed information entered in the register may be disclosed by the Regional Board or the registration organisation—

- (a) where an adoption agency is acting on behalf of a child who is suitable for adoption, to the agency to assist in finding prospective adopters with whom it would be appropriate for the child to be placed;
- (b) where an adoption agency is acting on behalf of prospective adopters who are suitable to adopt a child, to the agency to assist in finding a child appropriate for adoption by them.

(3) Prescribed information entered in the register, or compiled from information entered in the register, may be disclosed by the Regional Board or the registration organisation to any prescribed person for use for statistical or research purposes, or for other prescribed purposes.

(4) Regulations may prescribe the steps to be taken by adoption agencies in respect of information received by them by virtue of subsection (2).

(5) Subsection (1) does not apply to a disclosure of information with the authority of the Regional Board.

(6) Information disclosed to any person under subsection (2) or (3) may be given on any prescribed terms or conditions.

(7) Regulations may, in prescribed circumstances, require a prescribed fee to be paid to the Regional Board or the registration organisation—

- (a) by a prescribed adoption agency in respect of information disclosed under subsection (2); or
- (b) by a person to whom information is disclosed under subsection (3).

(8) If any information entered in the register is disclosed to a person in contravention of subsection (1), the person disclosing it is guilty of an offence.

(9) A person guilty of an offence under subsection (8) 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.

**Supplementary [j131]**

**131.**—(1) In this group of sections—

“organisation” includes a public body and a private or voluntary organisation;

“the register” means the Northern Ireland Adoption and Children Act Register.

(2) For the purposes of this group of sections—

- (a) a child is suitable for adoption if an adoption agency is satisfied that the child ought to be placed for adoption;
  - (b) prospective adopters are suitable to adopt a child if an adoption agency is satisfied that they are suitable to have a child placed with them for adoption.
- (3) Nothing authorised or required to be done by virtue of this group of sections constitutes an offence under section 93, 94 or 95.

*Supplementary*

**Time limit within which proceedings may be brought [j138]**

**132.**—(1) Notwithstanding anything in Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981, summary proceedings for an offence to which this Article applies may be brought within a period of six months from the date on which evidence sufficient in the opinion of the complainant to warrant the proceedings came to the complainant's knowledge; but no such proceedings shall be brought by virtue of this Article more than six years after the commission of the offence.

(2) For the purposes of this Article a certificate signed by or on behalf of the complainant and stating the date on which such evidence as is mentioned in subsection (1) came to the complainant's knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

- (3) This Article applies to an offence by virtue of—
- section 8;
  - section 58;
  - section 93;
  - section 94;
  - section 95; or
  - section 130.

**Research and investigations [j154C]**

**133.** The Department may conduct or promote or assist (by grants or otherwise) any person in conducting research or investigations into any matter connected with the functions under Part 1 of an adoption authority or the Department.

**Amendments, transitional and transitory provisions, savings and repeals [j139]**

**134.**—(1) The statutory provisions set out in Schedule {s3} have effect subject to the amendments there specified.

(2) Schedule {s4} (transitional and transitory provisions and savings) has effect.

(3) The statutory provisions set out in Schedule {s5} are hereby repealed to the extent specified in the second column of that Schedule.

**Regulations and orders [j140]**

**135.**—(1) Regulations other than regulations to which subsection (2) applies are subject to negative resolution.

(2) This subsection applies to regulations under—

- (a) section 3(4);
- (b) section 8 which include provision made under section 41(2);
- (c) section 94; or
- (d) section 126, 128, 129 or 130,

and to regulations which amend or repeal a provision of an Act of Parliament or Northern Ireland legislation.

(3) Regulations to which subsection (2) applies must not be made unless a draft of them has been laid before, and approved by resolution of, the Assembly.

(4) An order must not be made under—

- (a) section 92(6);
- (b) section 111(4); or
- (c) section 137 if it amends or repeals a provision of an Act of Parliament or Northern Ireland legislation,

unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(5) An order under section 137 other than an order to which subsection (4)(c) applies is subject to negative resolution.

**Rules of court [j141]**

**136.**—(1) In this Act “rules of court” includes family proceedings rules and county court rules (as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954).

(2) In subsection (1) “family proceedings rules” has the meaning given in Article 12(5) of the Family Law (Northern Ireland) Order 1993.

(3) In the case of an application for a placement order, for the variation or revocation of a placement order, or for an adoption order, the rules must require any person mentioned in subsection (4) to be notified—

- (a) of the date and place where the application will be heard; and
- (b) of the fact that, unless the person wishes or the court requires, the person need not attend.

(4) The persons referred to in subsection (3) are—

- (a) in the case of a placement order, every person who can be found whose consent to the making of the order is required under subsection (3)(a) of section 17 (or would be required but for subsection (3)(b) of that section) or, if no such person can be found, any relative who can be found;
- (b) in the case of a variation or revocation of a placement order, every person who can be found whose consent to the making of the placement order was required under subsection (3)(a) of section 17 (or would have been required but for subsection (3)(b) of that section);

- (c) in the case of an adoption order—
- (i) every person who can be found whose consent to the making of the order is required under subsection (2)(a) of section 44 (or would be required but for subsection (2)(c) of that section) or, if no such person can be found, any relative who can be found;
  - (ii) every person who has consented to the making of the order under section 16 (and has not withdrawn the consent) unless the person has given a notice under subsection (4)(a) of that section which has effect;
  - (iii) every person who, if leave were given under section 44(5), would be entitled to oppose the making of the order.

(5) In subsection (4) “relative” means a relative prescribed by rules of court.

(6) Rules of court may, for the purposes of the law relating to contempt of court, authorise the publication in such circumstances as may be specified of information relating to proceedings held in private involving children.

(7) In subsection (6) “proceedings held in private” means proceedings at which the public have no right to be present.

#### **Supplementary and consequential provision [j142]**

**137.**—(1) Any Department mentioned in subsection (2) may by order make—

- (a) any supplementary, incidental or consequential provision,
- (b) any transitory, transitional or saving provision,

which that Department considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.

(2) The Departments referred to in subsection (1) are—

- (a) the Department;
- (b) the Department of Finance; and
- (c) the Department of Justice.

(3) An order under this section may amend, repeal or modify any statutory provision.

#### **Interpretation [j144]**

**138.**—(1) In this Act—

- “adoption agency” has the meaning given by section 2;
- “adoption authority” has the meaning given by section 2(2);
- “adoption order” has the meaning given by section 43(1);
- “adoption society” has the meaning given by section 2(2);
- “adoption support services” has the meaning given by section 2(6);
- “appropriate voluntary organisation” has the meaning given by section 2(3);
- “body” includes an unincorporated body;
- “care order” has the meaning given by Article 2(2) of the Children Order;
- “child”, except where used to express a relationship, means a person who has not attained the age of 18 years;



- “child assessment order” has the meaning given in Article 2(2) of the Children Order;
- “Children Order” means the Children (Northern Ireland) Order 1995;
- “the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;
- “Convention adoption” has the meaning given in section 65(1)(c);
- “Convention adoption order” means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (regulations giving effect to the Convention), is made as a Convention adoption order;
- “Convention country” means a country or territory in which the Convention is in force;
- “court” has the meaning given by section 111(1);
- “the Department” means the Department of Health;
- “fee” includes expenses;
- “guardian” has the same meaning as in the Children Order and includes a special guardian within the meaning of the Children Order;
- “information” means information recorded in any form;
- “interim care order” means an interim care order under Article 57 of the Children Order;
- “notice” means a notice in writing;
- “notice of intention to adopt” has the meaning given in section 40(2);
- “overseas adoption” has the meaning given in section 86(1);
- “parental responsibility” has the meaning given in Article 6 of the Children Order;
- “placement order” has the meaning given in section 17(1);
- “placing a child for adoption” and “placed for adoption” have the meanings given in section 14(5) and section 15(4);
- “prescribed”, except in sections 51(7) and (8) and 136(4) and paragraphs 1(4), 3, 4 and 6 of Schedule 1 (where it means prescribed by rules of court), means prescribed by regulations;
- “prohibited steps order” has the meaning given in Article 8(1) of the Children Order;
- “public body” means a body established by or under any statutory provision;
- “Regional Board” means the Regional Health and Social Care Board;
- “regulations” means regulations made by the Department except where they are required to be made by the Department of Finance;
- “relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by marriage or civil partnership;
- “residence order” has the meaning given in Article 8(1) of the Children Order;
- “RQIA” means the Health and Social Care Regulation and Quality Improvement Authority;

“rules of court” has the meaning given in section 136(1);

“Scottish adoption order” means an order made, or having effect as if made, under section 28(1) of the Adoption and Children (Scotland) Act 2007 or section 12 of the Adoption (Scotland) Act 1978;

“specific issue order” has the meaning given in Article 8(1) of the Children Order;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“supervision order” has the meaning given in Article 49(1) of the Children Order;

“voluntary organisation” means a body (other than a public body) the activities of which are not carried on for profit.

(2) Any power conferred by this Act to prescribe a fee by regulations includes power to prescribe—

- (a) a fee not exceeding a prescribed amount;
- (b) a fee calculated in accordance with the regulations;
- (c) a fee determined by the person to whom it is payable, being a fee of a reasonable amount.

(3) In this Act “couple” means—

- (a) a married couple;
- (b) two persons who are civil partners of each other; or
- (c) two persons (whether of different sexes or the same sex) living as partners in an enduring family relationship.

(4) Subsection (3)(c) does not include two people one of whom is the other’s parent, grandparent, sister, brother, aunt or uncle.

(5) References to relationships in subsection (4)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for adoption; and
- (b) include the relationship of a child with the child’s adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(6) For the purposes of this Act, a person is the partner of a child’s parent if the person and the parent are a couple but the person is not the child’s parent.

### **Commencement [j148]**

**139.**—(1) Except as provided by subsection (2), the provisions of this Act come into operation on such day or days as the Department may by order appoint.

(2) This section and sections 135, 137, 138 and 140 come into operation on the day after the day on which this Act receives Royal Assent.

### **Short title [j150]**

**140.** This Act may be cited as the Adoption and Children Act (Northern Ireland) 2017.

SCHEDULES

SCHEDULE 1

Section 76(6)

REGISTRATION OF ADOPTIONS [S1]

*Registration of adoption orders*

1.—(1) Every adoption order must contain a direction to the Registrar General to make in the Adopted Children Register an entry in the form prescribed by regulations made by the Department of Finance.

(2) Where, on an application to a court for an adoption order in respect of a child, the identity of the child with a child to whom an entry in the registers of live-births or other records relates is proved to the satisfaction of the court, any adoption order made in pursuance of the application must contain a direction to the Registrar General to secure that the entry in the register or, as the case may be, record in question is marked with the word “Adopted”.

(3) Where an adoption order is made in respect of a child who has previously been the subject of an adoption order made by a court in Northern Ireland under Part 1 of this Act or any other statutory provision—

(a) sub-paragraph (2) does not apply; and

(b) the order must contain a direction to the Registrar General to mark the previous entry in the Adopted Children Register with the word “Re-adopted”.

(4) Where an adoption order is made, the prescribed officer of the court which made the order must communicate the order to the Registrar General in the prescribed manner; and the Registrar General must then comply with the directions contained in the order.

(5) In sub-paragraph (4) “prescribed” means prescribed by rules of court.

*Registration of adoptions in Great Britain, the Isle of Man and the Channel Islands*

2.—(1) Sub-paragraphs (2) and (3) apply where the Registrar General is notified by the authority maintaining a register of adoptions in a part of Great Britain or in the Isle of Man or the Channel Islands that an order has been made authorising the adoption of a child.

(2) If an entry in the registers of live-births or other records (and no entry in the Adopted Children Register) relates to the child, the Registrar General must secure that the entry is marked with—

(a) the word “Adopted”, followed by

(b) the name, in brackets, of the jurisdiction in which the order was made.

(3) If an entry in the Adopted Children Register relates to the child, the Registrar General must mark the entry with—

- (a) the word “Re-adopted”, followed by
- (b) the name, in brackets, of the jurisdiction in which the order was made.

(4) Where, after an entry in either of the registers or other records mentioned in sub-paragraphs (2) and (3) has been so marked, the Registrar General is notified by the authority concerned that—

- (a) the order has been quashed;
- (b) an appeal against the order has been allowed; or
- (c) the order has been revoked,

the Registrar General must secure that the marking is cancelled.

(5) A copy or extract of an entry in any register or other record, being an entry the marking of which is cancelled under sub-paragraph (4), is not to be treated as an accurate copy unless both the marking and the cancellation are omitted from it.

*Registration of other adoptions*

3.—(1) If the Registrar General is satisfied, on an application under this paragraph, that there are sufficient particulars relating to a child adopted under a registrable foreign adoption to enable an entry to be made in the Adopted Children Register for the child, the Registrar General must make the entry accordingly.

(2) If the Registrar General is also satisfied that an entry in the registers of live-births or other records relates to the child, the Registrar General must—

- (a) secure that the entry is marked “Adopted”, followed by the name, in brackets, of the country in which the adoption was effected; or
- (b) where appropriate, secure that the overseas registers of births are so marked.

(3) An application under this paragraph must be made, in the prescribed manner, by a prescribed person and the applicant must provide the prescribed documents and other information.

(4) An entry made in the Adopted Children Register by virtue of this paragraph must be made in the prescribed form.

(5) In this Schedule “registrable foreign adoption” means an adoption which satisfies prescribed requirements and is either—

- (a) adoption under a Convention adoption; or
- (b) adoption under an overseas adoption.

(6) In this paragraph—

“prescribed” means prescribed by regulations made by the Department of Finance;

“overseas register of births” includes—

- (a) a register made under regulations made by the Secretary of State under section 41(1)(g), or (h) of the British Nationality Act 1981;
- (b) a record kept under an Order in Council made under section 1 of the Registration of Births, Deaths and Marriages (Special Provisions) Act

1957 (c. 58) (other than a certified copy kept by the Registrar General for England Wales).

*Amendment of orders and rectification of Registers and other records*

4.—(1) The court by which an adoption order has been made may, on the application of the adopter or the adopted person, amend the order by the correction of any error in the particulars contained in it.

(2) The court by which an adoption order has been made may, if satisfied on the application of the adopter or the adopted person that within the period of one year beginning with the date of the order any new name—

- (a) has been given to the adopted person (whether in baptism or otherwise); or
- (b) has been taken by the adopted person,

either in place of or in addition to a name specified in the particulars required to be entered in the Adopted Children Register in pursuance of the order, amend the order by substituting or, as the case may be, adding that name in those particulars.

(3) The court by which an adoption order has been made may, if satisfied on the application of any person concerned that a direction for the marking of an entry in the registers of live-births, the Adopted Children Register or other records included in the order in pursuance of paragraph 1(2) or (3) was wrongly so included, revoke that direction.

(4) Where an adoption order is amended or a direction revoked under subparagraphs (1) to (3), the prescribed officer of the court must communicate the amendment in the prescribed manner to the Registrar General.

(5) The Registrar General must then—

- (a) amend the entry in the Adopted Children Register accordingly; or
- (b) secure that the marking of the entry in the registers of live-births, the Adopted Children Register or other records is cancelled,

as the case may be.

(6) Where an adoption order is quashed or an appeal against an adoption order allowed by any court, the court must give directions to the Registrar General to secure that—

- (a) any entry in the Adopted Children Register; and
- (b) any marking of an entry in that Register, the registers of live-births or other records as the case may be, which was effected in pursuance of the order,

is cancelled.

(7) Where an adoption order has been amended, any certified copy of the relevant entry in the Adopted Children Register which may be issued pursuant to section 77(2)(b) must be a copy of the entry as amended, without the reproduction of—

- (a) any note or marking relating to the amendment; or
- (b) any matter cancelled in pursuance of it.

(8) A copy or extract of an entry in any register or other record, being an entry the marking of which has been cancelled, is not to be treated as an accurate copy unless both the marking and the cancellation are omitted from it.

(9) If the Registrar General is satisfied—

- (a) that a registrable foreign adoption has ceased to have effect, whether on annulment or otherwise; or
- (b) that any entry or mark was erroneously made in pursuance of paragraph 3 in the Adopted Children Register, the registers of live-births, the overseas registers of births or other records,

the Registrar General may secure that such alterations are made in those registers or other records as the Registrar General considers are required in consequence of the adoption ceasing to have effect or to correct the error.

(10) Where an entry in such a register is amended in pursuance of sub-paragraph (9), any copy or extract of the entry is not to be treated as accurate unless it shows the entry as amended but without indicating that it has been amended.

(11) In this paragraph—

“overseas register of births” has the same meaning as in paragraph 3;

“prescribed” means prescribed by rules of court.

*Marking of entries on re-registration of birth on legitimation*

5.—(1) Without prejudice to paragraph 2(4) and paragraph 4(5), where, after an entry in the registers of live-births or other records has been marked in accordance with paragraph 1 or 2, the birth is re-registered under Article 19 of the Births and Deaths Registration (Northern Ireland) Order 1976 (re-registration of births of legitimated persons), the entry made on the re-registration must be marked in the like manner.

(2) Without prejudice to paragraph 4(9), where an entry in the register of live-births or other records is marked in pursuance of paragraph 3 and the birth in question is subsequently re-registered under Article 19 of that Order, the entry made on re-registration must be marked in the like manner.

*Cancellations in registers on legitimation*

6.—(1) This paragraph applies where an adoption order is revoked under section 54(1).

(2) The prescribed officer of the court must communicate the revocation in the prescribed manner to the Registrar General who must then cancel or secure the cancellation of—

- (a) the entry in the Adopted Children Register relating to the adopted person; and
- (b) the marking with the word “Adopted” of any entry relating to the adopted person in the registers of live-births or other records.

(3) A copy or extract of an entry in any register or other record, being an entry the marking of which is cancelled under this paragraph, is not to be treated as an accurate copy unless both the marking and the cancellation are omitted from it.

(4) In this paragraph “prescribed” means prescribed by rules of court.

*Adoption and Children*

SCHEDULE 2

Section 78(6)

DISCLOSURE OF BIRTH RECORDS BY REGISTRAR GENERAL [S2]

1.—(1) On an application made in the prescribed manner by an adopted person—

- (a) a record of whose birth is kept by the Registrar General, and
- (b) who has attained the age of 18 years,

the Registrar General must give the applicant any information necessary to enable the applicant to obtain a certified copy of the record of the applicant's birth.

(2) In sub-paragraph (1) "prescribed" means prescribed by regulations made by the Department of Finance.

2.—(1) Before giving any information to an applicant under paragraph 1, the Registrar General must inform the applicant that counselling services are available to the applicant—

- (a) from an appropriate voluntary organisation, or a registered adoption society within the meaning of section 2(2) of the Adoption and Children Act 2002 or an organisation within section 144(3)(b) of that Act;
- (b) if the applicant is in Northern Ireland, from any HSC trust;
- (c) if the applicant is in England and Wales, at the General Register Office or from any local authority or registered adoption support agency;
- (d) if the applicant is in Scotland, from any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

(2) In sub-paragraph (1)(c), "local authority" and "registered adoption support agency" have the same meaning as in the Adoption and Children Act 2002.

(3) If the applicant chooses to receive counselling from a person or body within sub-paragraph (1), the Registrar General must send to the person or body the information to which the applicant is entitled under paragraph 2.

3. Where an adopted person who is in Northern Ireland—

- (a) applies for information under paragraph 2;
- (b) applies for information under paragraph 1 of Schedule 2 to the Adoption and Children Act 2002; or
- (c) is supplied with information under section 55(4)(b) of the Adoption and Children (Scotland) Act 2007,

any adoption agency must, if asked by the applicant to do so, provide counselling for the applicant.

4.—(1) Where a person—

- (a) was adopted before 18th December 1987, and
- (b) applies for information under paragraph 2,

the Registrar General must not give the information to the applicant unless the applicant has attended an interview with a counsellor arranged by a person or body from whom counselling services are available as mentioned in paragraph 2.

(2) Where the Registrar General is prevented by sub-paragraph (1) from giving information to a person who is not living in the United Kingdom, the Registrar General may give the information to any body which—

- (a) the Registrar General is satisfied is suitable to provide counselling to that person, and.
- (b) has notified the Registrar General that it is prepared to provide such counselling.