

Adoption and Children Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health, are published separately as Bill 34 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Milburn has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Adoption and Children Bill are compatible with the Convention rights.

Adoption and Children Bill

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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; to amend section 93 of the Local Government Act 2000; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

ADOPTION

CHAPTER 1

INTRODUCTORY

- | | | |
|----------|---|----------|
| 1 | Considerations applying to the exercise of powers | 5 |
| (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 his life. | |
| (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. | 10 |
| (4) | The court or adoption agency must have regard to the following matters (among others) – | |
| | (a) the child’s ascertainable wishes and feelings regarding the decision (considered in the light of the child’s age and understanding), | 15 |
| | (b) the child’s particular needs, | |
| | (c) the likely effect on the child (throughout his life) 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, | 20 |

-
- (e) any harm which the child has suffered or is at risk of suffering,
- (f) 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, 5
 - (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, 10
 - (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. 15
- (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 Act 1989); 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 – 20
- (a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order or placement order or the revocation of a placement order,
 - (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, 25
- but does not include coming to a decision about granting leave in any other circumstances.
- (8) For the purposes of this section – 30
- (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,
 - (c) references to the court making an order include its dispensing with parental consent. 35

CHAPTER 2

THE ADOPTION SERVICE

The Adoption Service

2 Basic definitions

- (1) The services maintained by local authorities under section 3(1) may be collectively referred to as “the Adoption Service”, and a local authority or registered adoption society may be referred to as an adoption agency. 40
- (2) In this Act, “registered adoption society” means a voluntary organisation which is an adoption society registered under Part 2 of the Care Standards Act

2000; but in relation to the provision of any facility of the Adoption Service, references to a registered adoption society or to an adoption agency do not include an adoption society which is not registered in respect of that facility.

- (3) A registered adoption society is to be treated as registered in respect of any facility of the Adoption Service unless it is a condition of its registration that it does not provide that facility. 5
- (4) No application for registration under Part 2 of the Care Standards Act 2000 may be made in respect of an adoption society which is an unincorporated body.
- (5) In this Act – 10
“the 1989 Act” means the Children Act 1989,
“adoption society” means a body whose functions consist of or include making arrangements for the adoption of children,
“voluntary organisation” means a body other than a public or local authority the activities of which are not carried on for profit. 15
- (6) In this Act, “adoption support services” means –
(a) counselling, advice and information in connection with adoption, and
(b) such other services as are specified in regulations (which may include financial support).
- (7) In this Chapter, references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands. 20

3 Maintenance of Adoption Service

- (1) Each local authority must continue to maintain within their area a service designed to meet the needs, in relation to adoption, of – 25
(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 – 30
(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) – 35
(a) must extend to the provision of adoption support services to persons who are within a description prescribed by regulations,
(b) may extend to the provision of those services to other persons.
- (4) A local authority may provide any of the requisite facilities by securing their provision by – 40
(a) registered adoption societies, or
(b) other persons who are within a description prescribed by regulations of persons who may provide the facilities in question.
- (5) The facilities of the service must be provided in conjunction with the local authority’s other social services and with registered adoption societies in their

area, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.

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

4 Assessments etc. for adoption support services

- (1) A local authority must at the request of—
 (a) any of the persons mentioned in paragraphs (a) to (c) of section 3(1), or
 (b) any other person who falls within a description prescribed by regulations (subject to subsection (7)(a)),
 carry out an assessment of that person’s needs for adoption support services. 10
- (2) A local authority may, at the request of any person, carry out an assessment of that person’s needs for adoption support services.
- (3) A local authority may request the help of the persons mentioned in paragraph (a) or (b) of section 3(4) in carrying out an assessment. 15
- (4) Where, as a result of an assessment, a local authority decide that a person has needs for adoption support services, they must then decide whether to provide any such services to that person.
- (5) If—
 (a) a local authority decide to provide any adoption support services to a person, and
 (b) the circumstances fall within a description prescribed by regulations,
 the local authority must prepare a plan in accordance with which adoption support services are to be provided to the person and keep the plan under review. 20
 25
- (6) Regulations may make provision about assessments, preparing and reviewing plans, the provision of adoption support services in accordance with plans and reviewing the provision of adoption support services.
- (7) The regulations may in particular make provision—
 (a) as to the circumstances in which a person mentioned in paragraph (b) of subsection (1) is to have a right to request an assessment of his needs in accordance with that subsection,
 (b) about the type of assessment which, or the way in which an assessment, is to be carried out, 35
 (c) about the way in which a plan is to be prepared,
 (d) about the way in which, and time at which, a plan or the provision of adoption support services is to be reviewed,
 (e) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan, 40
 (f) as to the circumstances in which a local authority may provide adoption support services subject to conditions,
 (g) as to the consequences of conditions imposed by virtue of paragraph (f) not being met (including the recovery of any financial support provided by a local authority), 45

-
- (h) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority's area,
- (i) as to the circumstances in which a local authority may recover from another local authority the expenses of providing adoption support services to any person. 5
- (8) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other enactment.
- (9) If at any time during the assessment of the needs of any person under this section, it appears to a local authority that— 10
- (a) there may be a need for the provision of services to that person by a Health Authority or Primary Care Trust, or
- (b) there may be a need for the provision to him of any services which fall within the functions of a local education authority (within the meaning of the Education Act 1996), 15
- the local authority must notify that Health Authority, Primary Care Trust or local education authority.
- (10) Where it appears to a local authority that another local authority could, by taking any specified action, help in the exercise of any of their functions under this section, they may request the help of that other local authority, specifying the action in question. 20
- (11) A local authority whose help is so requested must comply with the request if it is consistent with the exercise of their functions.
- 5 Local authority plans for adoption services 25**
- (1) Each local authority must prepare a plan for the provision of the services maintained under section 3(1) and secure that it is published.
- (2) The plan must contain information of a description prescribed by regulations (subject to subsection (4)(b)).
- (3) The regulations may make provision requiring local authorities— 30
- (a) to review any plan,
- (b) in the circumstances prescribed by the regulations, to modify that plan and secure its publication or to prepare a plan in substitution for that plan and secure its publication.
- (4) The appropriate Minister may direct— 35
- (a) that a plan is to be included in another document specified in the direction,
- (b) that the requirements specified in the direction as to the description of information to be contained in a plan are to have effect in place of the provision made by regulations under subsection (2). 40
- (5) Directions may be given by the appropriate Minister for the purpose of making provision in connection with any duty imposed by virtue of this section including, in particular, provision as to—
- (a) the form and manner in which, and the time at which, any plan is to be published, 45

<ul style="list-style-type: none"> (b) the description of persons who are to be consulted in the preparation of any plan, (c) the time at which any plan is to be reviewed. 	5
<ul style="list-style-type: none"> (6) Subsections (2) to (5) apply in relation to a modified or substituted plan (or further modified or substituted plan) as they apply in relation to a plan prepared under subsection (1). 	5
<ul style="list-style-type: none"> (7) Directions given under this section may relate – <ul style="list-style-type: none"> (a) to a particular local authority, (b) to any class or description of local authorities, or (c) except in the case of a direction given under subsection (4)(b), to local authorities generally, and accordingly different provision may be made in relation to different local authorities or classes or descriptions of local authorities. 	10
6 Arrangements on cancellation of registration	
<p>Where, by virtue of the cancellation of its registration under Part 2 of the Care Standards Act 2000, a body has ceased to be a registered adoption society, the appropriate Minister may direct the body to make such arrangements as to the transfer of its functions relating to children and other transitional matters as seem to him expedient.</p>	15
7 Inactive or defunct adoption societies etc.	20
<ul style="list-style-type: none"> (1) This section applies where it appears to the appropriate Minister that – <ul style="list-style-type: none"> (a) a body which is or has been a registered adoption society is inactive or defunct, or (b) a body which has ceased to be a registered adoption society by virtue of the cancellation of its registration under Part 2 of the Care Standards Act 2000 has not made such arrangements for the transfer of its functions relating to children as are specified in a direction given by him. 	25
<ul style="list-style-type: none"> (2) The appropriate Minister may, in relation to such functions of the society as relate to children, direct what appears to him to be the appropriate local authority to take any such action as might have been taken by the society or by the society jointly with the authority. 	30
<ul style="list-style-type: none"> (3) A local authority are entitled to take any action which – <ul style="list-style-type: none"> (a) apart from this subsection the authority would not be entitled to take, or would not be entitled to take without joining the society in the action, but (b) they are directed to take under subsection (2). 	35
<ul style="list-style-type: none"> (4) The appropriate Minister may charge the society for expenses necessarily incurred by him or on his behalf in securing the transfer of its functions relating to children. 	40
<ul style="list-style-type: none"> (5) Before giving a direction under subsection (2) the appropriate Minister must, if practicable, consult both the society and the authority. 	

8 Adoption support agencies

- (1) In this Act, “adoption support agency” means an undertaking the purpose of which, or one of the purposes of which, is the provision of adoption support services; but an undertaking is not an adoption support agency –
- (a) merely because it provides information in connection with adoption, or 5
 - (b) if it is excepted by virtue of subsection (2).
- “Undertaking” has the same meaning as in the Care Standards Act 2000.
- (2) The following are excepted –
- (a) a registered adoption society, whether or not the society is registered in respect of the provision of adoption support services, 10
 - (b) a local authority,
 - (c) a local education authority (within the meaning of the Education Act 1996),
 - (d) a Health Authority, Special Health Authority, Primary Care Trust or NHS trust, 15
 - (e) the Registrar General,
 - (f) any person, or description of persons, excepted by regulations.
- (3) In section 4 of the Care Standards Act 2000 (basic definitions) –
- (a) after subsection (7) there is inserted –
“(7A) “Adoption support agency” has the meaning given by section 8 20
of the Adoption and Children Act 2001.”,
 - (b) in subsection (9)(a) (construction of references to descriptions of agencies), for “or a voluntary adoption agency” there is substituted “a voluntary adoption agency or an adoption support agency.”

Regulations 25

9 General power to regulate adoption etc. agencies

- (1) Regulations may make provision for any purpose relating to –
- (a) the exercise by local authorities or voluntary adoption agencies of their functions in relation to adoption, or
 - (b) the exercise by adoption support agencies of their functions in relation to adoption support services. 30
- (2) The extent of the power to make regulations under this section is not limited by sections 10 to 12 and 53 to 62 or by any other powers exercisable in respect of local authorities, voluntary adoption agencies or adoption support agencies.
- (3) Regulations may provide that a person who contravenes or fails to comply with any provision of regulations under this section is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. 35
- (4) In this section and section 10, “voluntary adoption agency” means a voluntary organisation which is an adoption society. 40

10 Management etc. of agencies

- (1) In relation to local authorities, voluntary adoption agencies and adoption support agencies, regulations under section 9 may make provision as to –
- (a) the persons who are fit to work for them for the purposes of the functions mentioned in section 9(1), 5
 - (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, 10
 - (f) the keeping of information.
- (2) Regulations made by virtue of subsection (1)(a) may, in particular, make provision for prohibiting persons from working in prescribed positions unless they are registered in, or in a particular part of, one of the registers maintained under section 56(1) of the Care Standards Act 2000 (registration of social care workers). 15
- (3) In relation to voluntary adoption agencies and adoption support agencies, regulations under section 9 may –
- (a) make provision as to the persons who are fit to manage an agency, including provision prohibiting persons from doing so unless they are registered in, or in a particular part of, one of the registers referred to in subsection (2), 20
 - (b) impose requirements as to the financial position of an agency,
 - (c) make provision requiring the appointment of a manager in prescribed circumstances, 25
 - (d) in the case of a voluntary adoption agency, make provision for securing the welfare of children placed by the agency, including provision as to the promotion and protection of their health,
 - (e) in the case of an adoption support agency, make provision as to the persons who are fit to carry on the agency. 30
- (4) Regulations under section 9 may make provision as to the conduct of voluntary adoption agencies and adoption support agencies, and may in particular make provision –
- (a) as to the facilities and services to be provided by an agency, 35
 - (b) as to the keeping of accounts,
 - (c) as to the notification to the registration authority of events occurring in premises used for the purposes of an agency,
 - (d) as to the giving of notice to the registration authority of periods during which the manager of an agency proposes to be absent, and specifying the information to be given in such a notice, 40
 - (e) as to the making of adequate arrangements for the running of an agency during a period when its manager is absent,
 - (f) as to the giving of notice to the registration authority of any intended change in the identity of the manager, 45
 - (g) as to the giving of notice to the registration authority of changes in the ownership of an agency or the identity of its officers,

- (h) requiring the payment of a fee of a prescribed amount to the registration authority in respect of any notification required to be made by virtue of paragraph (g),
- (i) requiring arrangements to be made for dealing with complaints made by or on behalf of those seeking, or receiving, any of the services provided by an agency and requiring the agency or manager to take steps for publicising the arrangements. 5

11 Fees

- (1) Regulations under section 9 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 the Adoption Services in Scotland and Northern Ireland), 10
 - (b) the fees which may be paid by adoption agencies to persons providing such facilities. 15
- (2) Regulations under section 9 may prescribe the fees which may be charged by local authorities in respect of the provision of prescribed facilities of the Adoption Service where the following conditions are met.
- (3) The conditions are that the facilities are provided in connection with—
 - (a) the adoption of a child brought into the United Kingdom for the purpose of adoption, or 20
 - (b) a Convention adoption, an overseas adoption or an adoption effected under the law of a country or territory outside the British Islands.

12 Independent review of determinations

- (1) Regulations under section 9 may establish a procedure under which any person in respect of whom a qualifying determination has been made by an adoption agency may apply to a panel constituted by the appropriate Minister for a review of that determination. 25
- (2) The regulations must make provision as to the description of determinations which are qualifying determinations for the purposes of subsection (1). 30
- (3) The regulations may include provision as to—
 - (a) the duties and powers of a panel (including the power to recover the costs of a review from the adoption agency by which the determination reviewed was made),
 - (b) the administration and procedures of a panel, 35
 - (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment),
 - (d) *the payment of expenses of members of a panel,*
 - (e) the duties of adoption agencies in connection with reviews conducted under the regulations, 40
 - (f) the monitoring of any such reviews.
- (4) The appropriate Minister may make an arrangement with an organisation under which functions in relation to the panel are performed by the organisation on his behalf. 45

- (5) If the appropriate Minister makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by the appropriate Minister.
- (6) *The arrangement may include provision for payments to be made to the organisation by the appropriate Minister.* 5
- (7) Where the appropriate Minister is the Assembly, subsections (4) and (6) also apply as if references to an organisation included references to the Secretary of State.
- (8) In this section, “organisation” includes a public body and a private or voluntary organisation. 10

Supplemental

13 Information concerning adoption

- (1) Each adoption agency must give to the appropriate Minister any statistical or other general information he requires about— 15
- (a) its performance of all or any of its functions relating to adoption,
 - (b) the children and other persons in relation to whom it has exercised those functions.
- (2) The following persons— 20
- (a) the justices’ chief executive for each magistrates’ court,
 - (b) the relevant officer of each county court,
 - (c) the relevant officer of the High Court,
- must give to the appropriate Minister any statistical or other general information he requires about the proceedings under this Act of the court in question. 25
- (3) In subsection (2), “relevant officer”, in relation to a county court or the High Court, means the officer of that court who is designated to act for the purposes of that subsection by a direction given by the Lord Chancellor.
- (4) The information required to be given to the appropriate Minister under this section must be given at the times, and in the form, directed by him. 30
- (5) The appropriate Minister may publish from time to time abstracts of the information given to him under this section.

14 Default power of appropriate Minister

- (1) If the appropriate Minister is satisfied that any local authority have failed, without reasonable excuse, to comply with any of the duties imposed on them by virtue of this Act, he may make an order declaring that authority to be in default in respect of that duty. 35
- (2) An order under subsection (1) must give the appropriate Minister’s reasons for making it.
- (3) An order under subsection (1) may contain such directions as appear to the appropriate Minister to be necessary for the purpose of ensuring that, within the period specified in the order, the duty is complied with. 40

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

15 Inspection of premises etc.

- (1) The appropriate Minister may arrange for any premises in which –
(a) a child is living with a person with whom the child has been placed by an adoption agency, or 5
(b) a child in respect of whom a notice of intention to adopt has been given under section 43 is, or will be, living,
to be inspected from time to time.
- (2) The appropriate Minister may require an adoption agency – 10
(a) to give him any information, or
(b) to allow him to inspect any records (in whatever form they are held), relating to the discharge of any of its functions in relation to adoption which the appropriate Minister specifies.
- (3) An inspection under this section must be conducted by a person authorised by the appropriate Minister. 15
- (4) An officer of a local authority may only be so authorised with the consent of the authority.
- (5) A person inspecting any premises under subsection (1) may –
(a) visit the child there, 20
(b) make any examination into the state of the premises and the treatment of the child there which he thinks fit.
- (6) A person authorised to inspect any records under this section may at any reasonable time have access to, and inspect and check the operation of, any computer (and associated apparatus) which is being or has been used in connection with the records in question. 25
- (7) A person authorised to inspect any premises or records under this section may –
(a) enter the premises for that purpose at any reasonable time,
(b) require any person to give him any reasonable assistance he may require. 30
- (8) A person exercising a power under this section must, if required to do so, produce a duly authenticated document showing his authority.
- (9) Any person who intentionally obstructs another in the exercise of a power under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. 35

16 Inquiries

- (1) The appropriate Minister may cause an inquiry to be held into any matter connected with the functions of an adoption agency.
- (2) Before an inquiry is begun, the appropriate Minister may direct that it is to be held in private. 40

- (3) Where no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section. 5

CHAPTER 3

PLACEMENT FOR ADOPTION AND ADOPTION ORDERS

Placement of children by adoption agency for adoption

17 Placement for adoption by agencies

- (1) An adoption agency may – 10
- (a) place a child for adoption with prospective adopters, or
- (b) where it has placed a child with any persons (whether under this Part or not), leave the child with them as prospective adopters, but only under section 18 or a placement order.
- (2) A child who is authorised to be placed for adoption with prospective adopters by a local authority is to be treated as looked after by the authority, whether or not he is for the time being placed for adoption. 15
- (3) If an application for an adoption order has been made by any persons in respect of a child and has not been disposed of –
- (a) an adoption agency which placed the child with those persons may leave the child with them until the application is disposed of, but 20
- (b) apart from that, the child may not be placed for adoption with any prospective adopters.
- “Adoption order” includes a Scottish or Northern Irish adoption order.
- (4) References in this Act (apart from this section) to an adoption agency placing a child for adoption – 25
- (a) are to its placing a child for adoption with prospective adopters, and
- (b) include, where it has placed a child with any persons (whether under this Act or not), leaving the child with them as prospective adopters; 30
- 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.
- (5) This section is subject to sections 29 to 34 (removal of children placed by adoption agencies).

18 Placing children with parental consent

- (1) Where an adoption agency is satisfied that each parent or guardian of a child has consented to the child – 35
- (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, 40

- and has not withdrawn the consent, the agency is authorised to place the child for adoption accordingly.
- (2) Consent to a child being placed for adoption with prospective adopters identified in the consent may be combined with consent to the child subsequently being placed for adoption with any prospective adopters who may be chosen by the agency in circumstances where the child is removed from or returned by the identified prospective adopters. 5
- (3) Subsection (1) does not apply where an application has been made on which a care order might be made and the application has not been disposed of.
- (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. 10
- (5) This section is subject to section 50 (parental etc. consent).
- 19 Advance consent to adoption 15**
- (1) A parent or guardian of a child who consents to the child being placed for adoption by an adoption agency under section 18 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 20
- (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. 25
- (4) A person who gives consent under this section may, at the same or any subsequent time, by notice given to the adoption agency –
- (a) state that he wishes to be informed of any application for an adoption order, or
- (b) withdraw such a statement. 30
- (5) A notice under subsection (4) has effect from the time when it is received by the adoption agency but has no effect if the person concerned has withdrawn his consent.
- (6) This section is subject to section 50 (parental etc. consent).
- 20 Placement orders 35**
- (1) A placement order is an order made by the court authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority.
- (2) The court may not make a placement order in respect of a child unless –
- (a) the child is subject to a care order, or 40
- (b) the court is satisfied that the conditions in section 31(2) of the 1989 Act (conditions for making a care order) are met.

- (3) The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied –
- (a) that the parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn the consent, or 5
 - (b) that the parent’s or guardian’s consent should be dispensed with. This subsection is subject to section 50 (parental etc. consent).
- (4) A placement order continues in force until –
- (a) it is revoked under section 23,
 - (b) an adoption order is made in respect of the child, or 10
 - (c) the child marries or attains the age of 18 years.
- “Adoption order” includes a Scottish or Northern Irish adoption order.

21 Applications for placement orders

- (1) A local authority must apply to the court for a placement order in respect of a child if – 15
- (a) the child is placed for adoption by them or is being provided with accommodation by them,
 - (b) no adoption agency is authorised to place the child for adoption,
 - (c) the authority consider that the conditions in section 31(2) of the 1989 Act are met, and 20
 - (d) the authority are satisfied that the child ought to be placed for adoption.
- (2) If –
- (a) an application has been made (and has not been disposed of) on which a care order might be made in respect of a child, or
 - (b) a child is subject to a care order and the appropriate local authority are not authorised to place the child for adoption, 25
- the appropriate local authority must apply to the court for a placement order if they are satisfied that the child ought to be placed for adoption.
- (3) If –
- (a) a child is subject to a care order, and 30
 - (b) the appropriate local authority are authorised to place the child for adoption under section 18,
- the authority may apply to the court for a placement order.
- (4) If a local authority –
- (a) are under a duty to apply to the court for a placement order in respect of a child, or 35
 - (b) have applied for a placement order in respect of a child and the application has not been disposed of,
- the child is to be treated as looked after by the authority.
- (5) Subsections (1) to (3) do not apply in respect of a child – 40
- (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. 45

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

- (6) Where –
- (a) an application for a placement order in respect of a child has been made and has not been disposed of, and
 - (b) no interim care order is in force,
- the court may give any directions it considers appropriate for the medical or psychiatric examination or other assessment of the child; but a child who is of sufficient understanding to make an informed decision may refuse to submit to the examination or other assessment. 5
- (7) The appropriate local authority – 10
- (a) in relation to a care order, is the local authority in whose care the child is placed by the order, and
 - (b) in relation to an application on which a care order might be made, is the local authority which makes the application.

22 Varying placement orders 15

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

23 Revoking placement orders 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 local authority authorised by the order to place the child for adoption unless each of the following conditions is met – 25
- (a) the court has given leave to apply,
 - (b) the child is not placed for adoption by the authority,
 - (c) the period of one year beginning with the date of the placement order has expired.
- (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. 30
- (4) Where –
- (a) an application for the revocation of a placement order has been made and has not been disposed of, and
 - (b) the child is not placed for adoption by the authority,
- the child may not without the court’s leave be placed for adoption under the order. 35

24 Parental responsibility

- (1) This section applies while –
- (a) a child is placed for adoption under section 18 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.
- 40
- (2) Parental responsibility for the child is given to the agency concerned.

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- (3) While the child is placed with prospective adopters, parental responsibility is given to them.
- (4) The agency may determine that the parental responsibility of any parent or guardian, or of prospective adopters, is to be restricted to the extent specified in the determination. 5

25 Contact

- (1) On an adoption agency being authorised to place a child for adoption, any provision for contact under the 1989 Act ceases to have effect.
- (2) While an adoption agency is so authorised –
- (a) no application may be made for any provision for contact under that Act, but 10
 - (b) an application may be made to the court for an order making provision under this section.
- (3) The application may be made by –
- (a) the child or the agency, 15
 - (b) any parent or guardian,
 - (c) if a residence order was in force immediately before the adoption agency was authorised to place the child for adoption, the person in whose favour the order was made,
 - (d) 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, 20
 - (e) any person who has obtained the court’s leave to make the application.
- (4) On an application by the child or the agency, the court may –
- (a) make any provision it considers appropriate for contact between the child and any person named in the order, or 25
 - (b) authorise the agency to refuse to allow contact between the child and any of the persons mentioned in subsection (3)(b) to (d) who is named in the order.
- (5) On an application by a person other than the child or the agency, the court may make any provision it considers appropriate for contact between the child and the applicant. 30
- (6) When making a placement order, the court may on its own initiative make an order under this section making any provision it considers appropriate for contact between the child and any person named in the order. 35
- (7) In this section, “provision for contact under the 1989 Act” means a contact order under section 8 of that Act or an order under section 34 of that Act (parental contact with children in care).

26 Contact: supplementary

- (1) An order under section 25 – 40
- (a) has effect while the adoption agency is authorised to place the child 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. 5
- (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 25 may be departed from by agreement between the agency and any person for whose contact with the child the order provides, 10
 - (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 affording any person contact with the child. 15
- (4) Before making a placement order the court must –
- (a) consider the arrangements which the adoption agency has made, or proposes to make, for affording any person contact with the child, and
 - (b) invite the parties to the proceedings to comment on those arrangements. 20
- (5) An order under that section may provide for contact on any conditions the court considers appropriate.
- 27 Further consequences of placement**
- (1) Where a child is placed for adoption under section 18 or an adoption agency is authorised to place a child for adoption under that section, a parent or guardian of the child may not apply for a residence order. 25
- (2) Where –
- (a) a child is placed for adoption under section 18 or an adoption agency is authorised to place a child for adoption under that section, or
 - (b) a placement order is in force in respect of a child,
- then (whether or not the child is in England and Wales) a person may not do either of the following things, unless the court gives leave or each parent or guardian of the child gives written consent. 30
- (3) Those things are –
- (a) causing the child to be known by a new surname, or
 - (b) removing the child from the United Kingdom. 35
- (4) Subsection (3) does not prevent the removal of a child from the United Kingdom for a period of less than one month by a person who provides the child’s home. 40
- 28 Further consequences of placement orders**
- (1) Where a placement order is made in respect of a child and either –
- (a) the child is subject to a care order, or
 - (b) the court at the same time makes a care order in respect of the child,

the care order does not have effect at any time when the placement order is in force.

- (2) On the making of a placement order in respect of a child, any order mentioned in section 8(1) of the 1989 Act, and any supervision order in respect of the child, ceases to have effect. 5
- (3) Where a placement order is in force –
- (a) no residence order, and
 - (b) no supervision order or child assessment order,
- may be made in respect of the child.

Removal of children who are or may be placed by adoption agencies 10

29 General prohibitions on removal

- (1) Where a child is placed for adoption by an adoption agency under section 18, a person (other than the agency) must not remove the child from the prospective adopters.
- (2) Where – 15
- (a) a child who is not for the time being placed for adoption is being provided with accommodation by a local authority, and
 - (b) the authority are under a duty under section 21 to apply to the court for a placement order, or have applied to the court for a placement order and the application has not been disposed of, 20
- 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 25
 - (b) the agency is authorised to place the child for adoption under section 18 or would be so authorised if any consent to placement under that section has not been withdrawn,
- a person (other than the agency) must not remove the child from the accommodation. 30
- (4) This section is subject to sections 30 to 32.
- (5) This group of sections (that is, this section and those sections) apply whether or not the child in question is in England and Wales.
- (6) This group of sections does not affect the exercise by any local authority or other person of any power conferred by any enactment, other than section 20(8) of the 1989 Act (removal of children from local authority accommodation). 35
- (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. 40

30 Section 29: recovery by parent etc. where child not yet placed

- (1) This section 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 18 if consent to placement under that section had not been withdrawn. 5
- (2) If –
- (a) any parent or guardian of the child informs the agency that he wishes the child to be returned to him, and 10
 - (b) where the agency are a local authority, they are not under a duty to apply, and have not applied, for a placement order, or have applied for such an order and the order has been refused,
- the agency must return the child to him within the period of 14 days beginning with the request. 15
- (3) But if the child is subject to a care order –
- (a) subsection (2) does not apply, and
 - (b) sections 49 and 50 of the 1989 Act (abduction etc. of children in care) have effect as if the person who for the time being has care of the child had that care by virtue of the care order. 20

31 Section 29: recovery by parent etc. where agency not opposed

- (1) This section applies where –
- (a) a child is placed for adoption by an adoption agency under section 18,
 - (b) consent to placement under that section has been withdrawn, and
 - (c) if the agency are a local authority, they are not under a duty to apply, and have not applied, for a placement order. 25
- (2) If a parent or guardian of the child informs the agency that he wishes the child to be returned to him –
- (a) the agency must give notice of the parent’s or guardian’s wish to the prospective adopters, and 30
 - (b) the prospective adopters must return the child to the agency within the period of 14 days beginning with the day on which the notice is given.
- (3) A prospective adopter who fails to comply with subsection (2)(b) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both. 35
- (4) As soon as a child is returned to an adoption agency under this section, the agency must return the child to the parent or guardian in question.
- (5) Where a notice under subsection (2) is given, but –
- (a) before the notice was given, an application for an adoption order (including a Scottish or Northern Irish adoption order) or residence order, or for leave to apply for a residence order, was made in respect of the child, and 40
 - (b) the application (and, in a case where leave is given on an application to apply for a residence order, the application for the order) has not been disposed of, 45

the prospective adopters are not required by virtue of the notice to return the child to the agency unless the court so orders.

32 Section 29: recovery by parent etc. where application for placement order refused

- (1) This section applies where – 5
 - (a) a child is placed for adoption by a local authority under section 18,
 - (b) the authority have applied for a placement order and the application has been refused, and
 - (c) any parent or guardian of the child informs the authority that he wishes the child to be returned to him. 10
- (2) The prospective adopters must return the child to the 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. 15
- (4) As soon as a child is returned to the authority, they must return the child to the parent or guardian in question.

33 Placement orders: prohibition on removal

- (1) Where a placement order in respect of a child – 20
 - (a) is in force, or
 - (b) has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by the local authority,

a person (other than the local authority) may not remove the child from the prospective adopters or from accommodation provided by the agency. 25
- (2) A person who removes a child in contravention of subsection (1) is guilty of an offence.
- (3) Where a court revoking a placement order in respect of a child determines that the child is not to remain with any former prospective adopters with whom the child is placed, they must return the child to the local authority within the period determined by the court for the purpose; and a person who fails to do so is guilty of an offence. 30
- (4) Where a court revoking a placement order in respect of a child determines that the child is to be returned to a parent or guardian, the local authority must return the child to the parent or guardian as soon as the child is returned to the authority or, where the child is in accommodation provided by the authority, at once. 35
- (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. 40
- (6) This section does not affect the exercise by any local authority or other person of any power conferred by any enactment, other than section 20(8) of the 1989 Act.

- (7) This section does not prevent the removal of a child who is arrested.
- (8) This section applies whether or not the child in question is in England and Wales.

34 Return of child in other cases

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

Removal of children in non-agency cases

35 Restrictions on removal

- (1) At any time when a child's home is with any persons ("the people concerned") with whom the child is not placed by an adoption agency, but the people concerned—

-
- (a) have applied for an adoption order in respect of the child and the application has not been disposed of,
- (b) have given notice of intention to adopt, or
- (c) have applied for leave to apply for an adoption order under section 41(6) and the application has not been disposed of, 5
- a person may remove the child only in accordance with the provisions of this group of sections (that is, this section and sections 36 to 39).
- The reference to a child placed by an adoption agency includes a child placed by a Scottish or Northern Irish adoption agency.
- (2) For the purposes of this group of sections, a notice of intention to adopt is to be disregarded if – 10
- (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. 15
- (3) For the purposes of this group of sections, if the people concerned apply for leave to apply for an adoption order under section 41(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. 20
- (4) This section does not prevent the removal of a child who is arrested.
- (5) Where a parent or guardian may remove a child from the people concerned in accordance with the provisions of this group of sections, the people concerned must at the request of the parent or guardian return the child to the parent or guardian at once. 25
- (6) A person who –
- (a) fails to comply with subsection (5), or
- (b) removes a child in contravention of this section, 30
- is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (7) This group of sections applies whether or not the child in question is in England and Wales.
- 36 Applicants for adoption 35**
- If section 35(1)(a) applies, the following persons may remove the child –
- (a) a person who has the court’s leave,
- (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act.
- 37 Local authority foster parents 40**
- (1) This section applies if the child’s home is with local authority foster parents.
- (2) If –

-
- (a) the child has had his home with the foster parents at all times during the period of five years ending with the removal and the foster parents have given notice of intention to adopt, or
- (b) an application has been made for leave under section 41(6) and has not been disposed of,
- the following persons may remove the child. 5
- (3) They are –
- (a) a person who has the court’s leave,
- (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act. 10
- (4) If subsection (2) does not apply but –
- (a) the child has had his home with the foster parents at all times during the period of one year ending with the removal, and
- (b) the foster parents have given notice of intention to adopt,
- the following persons may remove the child. 15
- (5) They are –
- (a) a person with parental responsibility for the child who is exercising the power in section 20(8) of the 1989 Act,
- (b) a person who has the court’s leave,
- (c) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act. 20
- 38 Step parents**
- (1) This section applies if a child’s home is with a step-parent who has given notice of intention to adopt.
- (2) If the child’s home has been with the step-parent 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 – 25
- (a) a person who has the court’s leave,
- (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act. 30
- (3) If subsection (2) does not apply, the following persons may remove the child –
- (a) a parent or guardian,
- (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act,
- (c) a person who has the court’s leave. 35
- 39 Other non-agency cases**
- (1) In any case where sections 36 to 38 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 41(6) and the application has not been disposed of,
- the following persons may remove the child. 40
- (2) They are –
- (a) a person who has the court’s leave,

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

Breach of restrictions on removal

40 Recovery orders

- (1) This section applies where it appears to the court 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. 5
- (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), 10
- (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, 15
- (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 (3)(d) if it appears to the court that there are reasonable grounds for believing the child to be on them. 20
- (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. 25
- (5) A person who intentionally obstructs a person exercising a power of removal conferred by the order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) A person must comply with a request to disclose information as required by the order even if the information sought might constitute evidence that he had committed an offence. 30
- (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 35
- (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 – 40
- (a) an offence under section 2 or 5 of the Perjury Act 1911 or Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath),

- (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).
- (9) An order under this section has effect –
- (a) in relation to Scotland, as if it were an order made by the Court of Session which that court had jurisdiction to make, 5
- (b) in relation to Northern Ireland, as if it were an order of the High Court under Article 30 of the Adoption (Northern Ireland) Order 1987 (return of child taken away).

Preliminaries to adoption 10

41 Child to live with adopters before application

- (1) An application for an adoption order may not be made unless –
- (a) if subsection (2) applies, the condition in that subsection is met,
- (b) if that subsection does not apply, the condition in whichever is applicable of subsections (3) to (5) applies. 15
- (2) If 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, the condition is that the child must have had his home with the applicant or, in the case of an application by a married couple, with one or both of them at all times during the period of ten weeks preceding the application. 20
- (3) If the applicant is a step-parent of the child, the condition is that the child must have had his home with the applicant at all times during the period of six months preceding the application.
- (4) If the applicants are local authority foster parents, the condition is that the child must have had his home with the applicants at all times during the period of one year preceding the application. 25
- (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 married 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. 30
- (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 married couple, both of them together in the home environment have been afforded – 35
- (a) where the child was placed for adoption with the applicant or applicants by an adoption agency, to that agency,
- (b) in any other case, to the local authority within whose area the home is.
- (8) In this section and sections 42 and 43(1) – 40
- (a) references to an adoption agency include a Scottish or Northern Irish adoption agency,
- (b) references to a child placed for adoption by an adoption agency are to be read accordingly.

42 Reports where child placed by agency

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

- (a) submit to the court a report on the suitability of the applicants and on any other matters relevant to the operation of section 1, and 5
- (b) assist the court in any manner the court directs.

43 Notice of intention to adopt

- (1) This section applies where persons (referred to in this section as “proposed adopters”) wish to adopt a child who is not placed for adoption with them by an adoption agency. 10
- (2) An adoption order may not be made in respect of the child unless the proposed adopters have given notice to the appropriate local authority of their intention to apply for the adoption order (referred to in this Act as a “notice of intention to adopt”).
- (3) The notice must be given not more than two years, or less than three months, before the date on which the application for the adoption order is made. 15
- (4) Where—
 - (a) if a person were seeking to apply for an adoption order, subsection (4) or (5) of section 41 would apply, but
 - (b) the condition in the subsection in question is not met, 20
 the person may not give notice of intention to adopt unless he has the court’s leave to apply for an adoption order.
- (5) On receipt of a notice of intention to adopt, the local authority must investigate the matter and submit to the court a report of their investigation.
- (6) In particular, the local authority must, so far as is practicable, investigate the suitability of the proposed adopters and any other matters relevant to the operation of section 1 in relation to the application. 25
- (7) If a local authority receive a notice of intention to adopt in respect of a child whom they know was (immediately before the notice was given) looked after by another local authority, they must, not more than seven days after the receipt of the notice, inform the other local authority in writing that they have received the notice. 30
- (8) Where—
 - (a) a local authority have placed a child with any persons otherwise than as prospective adopters, and 35
 - (b) the persons give notice of intention to adopt,
 the authority are not to be treated as leaving the child with them as prospective adopters for the purposes of section 17(1)(b).
- (9) In this section, references to the appropriate local authority, in relation to any proposed adopters, are to the local authority for the area in which, at the time of giving the notice of intention to adopt, they have their home. 40

The making of adoption orders

44 Adoption orders

- (1) An adoption order is an order made by the court on an application under section 48 or 49 giving parental responsibility for a child to the adopters or adopter. 5
- (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 1989 Act, and 10
 - (c) 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.
- (3) An adoption order – 15
 - (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 49 by a person who is married to a parent of the adopted child, does not affect the parental responsibility of that parent or any duties of that parent within subsection (2)(c). 20
- (4) Subsection (2)(c) 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. 25
- (5) An adoption order may be made even if the child to be adopted is already an adopted child.

45 Conditions for making adoption orders

- (1) An adoption order may not be made unless one of the following three conditions is met; but this section is subject to section 50 (parental etc. consent). 30
- (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 19 and does not oppose the making of the adoption order, or 35
 - (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 – 40
 - (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 the child was at least six weeks old when the placement order was made, and 5
- (c) no parent or guardian opposes the making of the adoption order.
- (5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court’s leave.
- (6) The third condition is that the child is free for adoption by virtue of an order made – 10
- (a) in Scotland, under section 18 of the Adoption (Scotland) Act 1978, or
- (b) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987.
- (7) The court cannot give leave under subsection (3) or (5) unless satisfied that there has been a change of circumstances since the consent of the parent or guardian was given or, as the case may be, the placement order was made. 15
- (8) An adoption order may not be made in relation to a person who is or has been married.
- (9) An adoption order may not be made in relation to a person who has attained the age of 19 years. 20
- 46 Restrictions on making adoption orders**
- (1) The court may not hear an application for an adoption order in relation to a child, where a previous application to which subsection (2) applies made in relation to the child by the same persons was refused by any court, unless it appears to the court that, because of a change in circumstances or for any other reason, it is proper to hear the application. 25
- (2) This subsection applies to any application –
- (a) for an adoption order or a Scottish or Northern Irish adoption order, or
- (b) for an order for adoption made in the Isle of Man or any of the Channel Islands. 30
- 47 Applications for adoption**
- (1) An application for an adoption order may be made by – 35
- (a) a married couple, or
- (b) one person,
- but only if it is made under section 48 or 49 and one of the following conditions is met.
- (2) The first condition is that at least one of the spouses (in the case of an application under section 48) or the applicant (in the case of an application under section 49) is domiciled in a part of the British Islands. 40
- (3) The second condition is that both spouses (in the case of an application under section 48) or the applicant (in the case of an application under section 49) have been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of the application.

- (4) An application for an adoption order may only be made if the person to be adopted has not attained the age of 18 years on the date of the application.
- (5) References in this Act to a child, in connection with any proceedings (whether or not concluded) for adoption, (such as “child to be adopted” or “adopted child”) include a person who has attained the age of 18 years before the proceedings are concluded. 5

48 Adoption by married couple

- (1) An adoption order may be made on the application of a married couple where both spouses have attained the age of 21 years.
- (2) An adoption order may be made on the application of a married couple where – 10
 - (a) one spouse is the mother or the father of the person to be adopted and has attained the age of 18 years, and
 - (b) the other spouse has attained the age of 21 years.

49 Adoption by one person

- (1) An adoption order may be made on the application of one person who has attained the age of 21 years and is not married.
- (2) An adoption order may be made on the application of one person who has attained the age of 21 years and is married if the court is satisfied that – 15
 - (a) the person is married to a parent of the person to be adopted,
 - (b) the person’s spouse cannot be found,
 - (c) the spouses have separated and are living apart, and the separation is likely to be permanent, or
 - (d) the person’s spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order. 25
- (3) The requirement of subsections (1) and (2) that the applicant has attained the age of 21 years does not apply if the applicant is the mother or the father of the person to be adopted.
- (4) An adoption order may not be made on an application under this section by the mother or the father of the person to be adopted unless the court is satisfied that – 30
 - (a) the other natural parent is dead or cannot be found,
 - (b) by virtue of section 28 of the Human Fertilisation and Embryology Act 1990, there is no other parent, or
 - (c) there is some other reason justifying the child’s not being adopted by both natural parents, 35

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.

*Placement and adoption: general***50 Parental etc. consent**

- (1) The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that— 5
- (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— 10
- (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. 15
- (4) The withdrawal of any consent to the placement of a child for adoption, or of any consent given under section 19, is ineffective if it is given after an application for an adoption order is made.
- (5) “Consent” means consent given freely, unconditionally and with full understanding of what is involved; but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made. 20
- (6) “Parent” (except in subsections (8) and (9) below) means a parent having parental responsibility.
- (7) Consent must be given or withdrawn in the form prescribed by regulations; and, if the regulations are made for the purposes of section 45(2)(a), they are to be made by the Lord Chancellor. 25
- (8) Subsection (9) applies if—
- (a) an agency has placed a child for adoption under section 18 in pursuance of consent given by a parent of the child, and 30
 - (b) at a later time, the other parent of the child acquires parental responsibility for the child.
- (9) 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. 35

51 Modification of 1989 Act in relation to adoption

- (1) Where a local authority are authorised to place a child for adoption, regulations may provide for the following provisions of the 1989 Act to apply with modifications, or not to apply, in relation to the child.
- (2) The provisions are— 40
- (a) section 22(4)(b), (c) and (d) and (5)(b) (duty to ascertain wishes and feelings of certain persons),

(b)	paragraphs 15 and 21 of Schedule 2 (promoting contact with parents and parents’ obligation to contribute towards maintenance).	
(3)	Where a registered adoption society is authorised to place a child for adoption, regulations may provide—	
(a)	for section 61 of that Act to have effect in relation to the child whether or not he is accommodated by or on behalf of the society,	5
(b)	for subsections (2)(b) to (d) and (3)(b) of that section (duty to ascertain wishes and feelings of certain persons) to apply with modifications, or not to apply, in relation to the child.	
(4)	Where a child’s home is with persons who have given notice of intention to adopt, no contribution is payable (whether under a contribution order or otherwise) under Part 3 of Schedule 2 to that Act (contributions towards maintenance of children looked after by local authorities) in respect of the period referred to in subsection (5).	10
(5)	That period begins when the notice of intention to adopt is given and ends if—	15
(a)	the period of four months beginning with the giving of the notice expires without the prospective adopters applying for an adoption order, or	
(b)	an application for such an order is withdrawn or refused.	
(6)	In this section, “notice of intention to adopt” includes notice of intention to apply for a Scottish or Northern Irish adoption order	20
52	Revocation of adoptions on legitimisation	
(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.	25
(2)	In relation to an adoption order made by a magistrates’ court, the reference in subsection (1) to the court by which the order was made includes a court acting for the same petty sessions area.	
	<i>Disclosure of information about a person’s adoption</i>	30
53	Information to be kept about a person’s adoption	
(1)	Regulations may prescribe—	
(a)	the information which an adoption agency must keep in relation to a person’s adoption,	
(b)	the form and manner in which it must keep that information.	35
(2)	Below in this group of sections (that is, this section and sections 54 to 62), any information in relation to a person’s adoption kept by an adoption agency in pursuance of the regulations is referred to as section 53 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.	40

54 Restrictions on disclosure of protected etc. information

- (1) Any section 53 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. 5
- (2) In this group of sections, information the disclosure of which to a person is
 restricted by virtue of subsection (1) is referred to (in relation to him) as
 protected information.
- (3) 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. 10
- (4) Any information kept by an adoption agency which is necessary to enable the
 adopted person to obtain a certified copy of the record of his birth may only be
 disclosed by the agency in pursuance of this group of sections. 15
- (5) In this group of sections, information the disclosure of which is restricted by
 virtue of subsection (4) is referred to as section 76 information.
- (6) This section does not prevent the disclosure of protected information or section
 76 information in pursuance of a prescribed agreement to which the adoption
 agency is a party. 20

55 Disclosure of other information

- (1) This section applies to any section 53 information other than protected
 information or section 76 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. 25
- (3) An adoption agency must, in prescribed circumstances, disclose prescribed
 information to a prescribed person.
- (4) But information about a child may be disclosed to prospective adopters under
 this section only if it is prescribed for the purpose of this subsection. 30

56 Offence

Regulations may provide that a registered adoption society which discloses
 any information in contravention of section 54 or 55(4) is to be guilty of an
 offence and liable on summary conviction to a fine not exceeding level 5 on the
 standard scale. 35

57 Disclosing information to adopters

- (1) As soon as practicable after the making of an adoption order, the appropriate
 adoption agency must disclose to the adopters any of the section 53
 information which—
 (a) is prescribed as information to be disclosed to them, and 40
 (b) is neither protected information about any person other than the
 adopted person nor section 76 information.

- (2) But regulations may authorise the agency to withhold information which would otherwise have to be disclosed under subsection (1).
- (3) In this group of sections, the information disclosed to the adopters under subsection (1) is referred to as section 57 information.
- (4) Regulations may provide for the appropriate adoption agency to disclose any information prescribed for the purposes of subsection (1)(a) to the court which made the adoption order. 5

58 Disclosing information to adopted adult

- (1) This section applies to an adopted person who has attained the age of 18 years.
- (2) The adopted person has the right, at his request, to receive the section 57 information from the appropriate adoption agency. 10
- (3) The adopted person also has the right, at his request, to receive from the court which made the adoption order a copy of any prescribed document or prescribed order relating to the adoption.
- (4) Subsection (3) does not apply to a document or order so far as it contains information which is protected information or section 76 information. 15
- (5) Regulations may authorise the appropriate adoption agency to disclose information which is protected information or section 76 information to the adopted person.
- (6) But regulations made by virtue of subsection (5) must make provision for ensuring that protected information or section 76 information is not disclosed to the adopted person while there is an effective objection to the disclosure, unless the disclosure is made in prescribed circumstances. 20

59 Disclosing protected etc. information in other circumstances

- (1) Regulations may authorise the appropriate adoption agency to disclose protected information or section 76 information to an adopted person who has not attained the age of 18 years. 25
- (2) Regulations may authorise or require an adoption agency to disclose protected information or section 76 information to a person who is not an adopted person. 30
- (3) But regulations made by virtue of subsection (1) or (2) must make provision for ensuring that protected information or section 76 information is not disclosed to a person while there is an effective objection to the disclosure, unless the disclosure is made in prescribed circumstances.

60 Counselling

- (1) Regulations may require adoption agencies to give information about the availability of counselling to persons – 35
 - (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 40
 - (c) considering entering with the agency into an agreement prescribed for the purposes of section 54(6).

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- (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, 5
 - (b) where the person providing the counselling is outside the United Kingdom, to require a prescribed fee to be paid.
- (4) The regulations may require any of the following persons to provide counselling for the purposes of arrangements under subsection (2) – 10
- (a) a local authority, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 or a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972,
 - (b) a registered adoption society or an adoption society which is approved under section 3 of the Adoption (Scotland) Act 1978 or registered under Article 4 of the Adoption (Northern Ireland) Order 1987, 15
 - (c) an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000.
- (5) For the purposes of subsection (4), where the functions of a Health and Social Services Board are exercisable by a Health and Social Services Trust, the reference in sub-paragraph (a) to a Board is to be read as a reference to the Health and Social Services Trust. 20
- 61 Other provision to be made by regulations**
- (1) Regulations may make provision for the purposes of this group of sections, including provision as to – 25
- (a) the performance by adoption agencies of their functions,
 - (b) the manner in which information may be received, and
 - (c) the matters mentioned below in this section.
- (2) Regulations may prescribe – 30
- (a) the circumstances in which a person may object to the disclosure of information about him,
 - (b) the form of objections to the disclosure of information,
 - (c) the manner in which objections or consents to such disclosure, or agreements made by virtue of section 54(6), are to be recorded, 35
 - (d) the circumstances in which objections are to be treated as effective,
 - (e) the circumstances in which a person may be treated as having objected to the disclosure of any information,
 - (f) the information to be provided by any person on an application for the disclosure of information under this group of sections. 40
- (3) Regulations may require adoption agencies –
- (a) to give to prescribed persons prescribed information about the rights or opportunities to obtain information, or to object to its disclosure, given by this group of sections,
 - (b) to make enquiries in prescribed circumstances for the purpose of discovering whether a person objects to the disclosure of information about him, 45

- (c) to seek prescribed information from, or give prescribed information to, the Registrar General in prescribed circumstances.
- (4) Regulations may require the Registrar General –
 - (a) to disclose to an adopted person at his request any information which the person requires to assist him to make contact with the adoption agency which is the appropriate adoption agency in his case, 5
 - (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) Subordinate legislation may make provision for enabling an adopted person who may receive any information in pursuance of this group of sections to authorise another person to do so on his behalf. 10
- (6) Regulations may provide for the payment of a fee in respect of the disclosure in prescribed circumstances of any information in pursuance of section 58 or 59; but an adopted person may not be required to pay any fee in respect of any information disclosed to him in relation to any person (other than an adoptive relative) who is related to the adopted person by blood (including half-blood) or marriage. 15
- (7) Regulations may provide for the payment of a fee by an adoption agency obtaining information under subsection (4)(b). 20

62 Interpretation

- (1) In this group of sections –
 - “appropriate adoption agency”, in relation to an adopted person, means –
 - (a) if the person was placed for adoption by an adoption agency, that agency or (if different) the agency which keeps the information in relation to his adoption, 25
 - (b) in any other case, the local authority to which notice of intention to adopt was given,
 - “prescribed” means prescribed by subordinate legislation, 30
 - “regulations” means regulations under section 9,
 - “subordinate legislation” means regulations or, in relation to information to be given by a court, rules.
- (2) But –
 - (a) regulations under section 60(2) imposing any requirement on a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or an adoption society which is approved under section 3 of the Adoption (Scotland) Act 1978, are to be made by the Scottish Ministers, 35
 - (b) regulations under section 60(2) imposing any requirement on a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972, or an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987, are to be made by the Department of Health, Social Services and Public Safety, 40
 - (c) regulations prescribing any fee require the approval of the Chancellor of the Exchequer, 45

- (d) regulations making any provision as to the manner in which any application is to be made for the disclosure of information by the Registrar General require his approval.

CHAPTER 4

STATUS OF ADOPTED CHILDREN

5

63 Meaning of adoption in Chapter 4

- (1) In this Chapter “adoption” means –
- (a) adoption by an adoption order or a Scottish or Northern Irish adoption order,
 - (b) adoption by an order made in the Isle of Man or any of the Channel Islands, 10
 - (c) an adoption effected under the law of a Convention country outside the British Islands, 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 15
 - (e) an adoption recognised by the law of England and Wales and effected under the law of any other country;
- and related expressions are to be interpreted accordingly.
- (2) Where the context allows, references in this Chapter to adoption include an adoption effected before as well as after the day on which this Chapter comes into force (referred to in this Chapter as “the appointed day”). 20

64 Status conferred by adoption

- (1) An adopted person is to be treated in law –
- (a) where the adopters are a married couple, as if the person had been born as a child of the marriage (whether or not the person was in fact born after the marriage was solemnized), 25
 - (b) where the adoption is effected by an order made by virtue of section 49(2)(a), as if the person had been born as a child of the marriage of the adopter and the person to whom the adopter is married (whether or not the person was in fact born after the marriage was solemnized), and 30
 - (c) in any other case, as if the person had been born to the adopter in wedlock (but not as a child of any actual marriage of the adopter).
- (2) An adopted person –
- (a) where the adoption is effected by an order made by virtue of section 49(2)(a), is to be treated in law as not being the child of any person other than the adopter and the person to whom the adopter is married, and 35
 - (b) in any other case, is to be treated in law, subject to subsection (3), 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. 40
- (3) In the case of a person adopted by one of the person’s natural parents as sole adoptive parent, subsection (2)(b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.

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- (4) This section has effect—
- (a) in the case of an adoption before the appointed day, from that day, and
 - (b) in the case of any other adoption, from the date of the adoption.
- (5) Subject to the provisions of this Chapter and Schedule 4, this section—
- (a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption, and so applies subject to any contrary indication, and 5
 - (b) has effect as respects things done, or events occurring, on or after the appointed day, or after the adoption, whichever is the later.
- 65 Adoptive relatives** 10
- A relationship existing by virtue of section 64 may be referred to as an adoptive relationship, and—
- (a) a male adopter may be referred to as the adoptive father,
 - (b) a female adopter may be referred to as the adoptive mother,
 - (c) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree; 15
- but this section does not prevent the term “parent”, or any other term not qualified by the word “adoptive”, being treated as including an adoptive relative.
- 66 Rules of interpretation for instruments concerning property** 20
- (1) The rules of interpretation contained in this section apply, (subject to any contrary indication and to Schedule 4) to any instrument so far as it contains a disposition of property.
- (2) In applying section 64(1) 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. 30
- (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”. 35
 3. As in example 1 or 2, but referring to grandchildren of A instead of children of A.
 4. A for life “until he has a child”, and then to his child or children.
- Note.* Subsection (2) will not affect the reference to the age of 21 years in example 2. 40
- (4) Section 64(2) does not prejudice—
- (a) any qualifying interest, or

-
- (b) any interest expectant (whether immediately or 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 – 5
- (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 64) that person is not to be treated as her child or as the child of her spouse (if any) for the purposes of the instrument. 10
- (6) In this section, “instrument” includes a private Act settling property, but not any other enactment.
- 67 Dispositions depending on date of birth**
- (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 66(2) does not affect entitlement by virtue of Part 3 of the Family Law Reform Act 1987 (dispositions of property). 15
- (2) Subsection (1) applies for example where –
- (a) a testator dies in 2001 bequeathing a legacy to his eldest grandchild living at a specified time, 20
- (b) his unmarried daughter has a child in 2002 who is the first grandchild,
- (c) his married son has a child in 2003,
- (d) subsequently his unmarried daughter adopts her child as sole adoptive parent. 25
- In that example the status of the daughter’s child as the eldest grandchild of the testator is not affected by the events described in paragraphs (c) and (d).
- 68 Property devolving with peerages etc.**
- (1) An adoption does not affect the descent of any peerage or dignity or title of honour. 30
- (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. 35
- 69 Protection of trustees and personal representatives**
- (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. 40
- (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 he 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.

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70 Meaning of disposition

- (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; 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 him (while of full capacity) immediately before his death.

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71 Miscellaneous enactments

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- (1) Section 64 does not apply for the purposes of –
- (a) the table of kindred and affinity in Schedule 1 to the Marriage Act 1949,
 - (b) sections 10 and 11 of the Sexual Offences Act 1956 (incest), or
 - (c) section 54 of the Criminal Law Act 1977 (inciting a girl to commit incest).
- (2) Section 64 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 an enactment 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.

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72 Pensions

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Section 64(2) 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.

73 Insurance

- (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 –

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- (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 enactments relating to such societies and companies, the adoptive parents are to be treated as the person who took out the policy. 5
- (2) Where the adoption is effected by an order made by virtue of section 49(2)(a), the references in subsection (1) to the adoptive parents are to be read as references to the adopter and the person to whom the adopter is married.

CHAPTER 5

THE REGISTERS 10

Adopted Children Register etc.

74 Adopted Children Register

- (1) The Registrar General must continue to maintain in the General Register Office a register, to be called the Adopted Children Register.
- (2) No entries may be made in the Adopted Children Register other than entries – 15
 - (a) directed to be made in it by adoption orders, or
 - (b) required to be made under Schedule 1.
- (3) 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. 20
- (4) Where an entry in the Adopted Children Register contains a record – 25
 - (a) of the date of birth of the adopted person, or
 - (b) of the country, or the district and sub-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 district and sub-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.
- (5) Schedule 1 (registration of adoptions and the amendment of adoption orders) is to have effect. 30

75 Searches and copies

- (1) The Registrar General must continue to maintain at the General Register Office an electronic index of the Adopted Children Register.
- (2) Any person may – 35
 - (a) search the index using any facility provided by the Registrar General,
 - (b) have a certified copy of any entry in the Adopted Children Register;

but the facility may restrict access to information relating to an adopted person who has not attained the age of 18 years where the person seeking the information is not able to provide the particulars of the adopted person required by the facility. 40

- (3) The terms, conditions and regulations as to payment of fees, and otherwise, applicable under the Births and Deaths Registration Act 1953, and the Registration Service Act 1953, in respect of—
- (a) searches in the index kept in the General Register Office of certified copies of entries in the registers of live-births, 5
 - (b) the supply from that office of certified copies of entries in those certified copies,
- also apply in respect of searches, and supplies of certified copies, under subsection (2).

76 Connections between the register and birth records 10

- (1) The Registrar General must maintain an index which makes 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) The index is not to be open to public inspection or search. 15
- (3) 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 provide the agency with any information necessary to enable the adopted person to obtain a certified copy of the record of his birth. 20
- “Appropriate adoption agency” has the same meaning as in section 62.
- (4) In relation to a person adopted before the day appointed for the commencement of sections 53 to 62, Schedule 2 applies instead of subsection (3).
- (5) 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— 25
- (a) is under the age of 18 years, and
 - (b) intends to be married,
- 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 person whom the applicant intends to marry may be within the prohibited degrees of relationship for the purposes of the Marriage Act 1949. 30
- (6) Before the Registrar General gives any information by virtue of this section, any prescribed fee which he has demanded must be paid. 35
- (7) In this section, “prescribed” means prescribed by regulations made by the Registrar General with the approval of the Chancellor of the Exchequer.

Adoption Contact Register

77 Adoption Contact Register

- (1) The Registrar General must continue to maintain at the General Register Office in accordance with regulations a register in two Parts to be called the Adoption Contact Register. 40

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- (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 – 5
- (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 him to obtain a certified copy of the record of his birth. 10
- (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 – 15
- (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 him to obtain a certified copy of the record of the adopted person’s birth.
- (6) Regulations may provide for – 20
- (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 specified fees in respect of the making or alteration of entries in the register and the disclosure of information contained in the register. 25
- 78 Adoption Contact Register: supplementary**
- (1) The Adoption Contact Register is not to be open to public inspection or search.
- (2) In section 77, “relative”, in relation to an adopted person, means any person (other than an adoptive relative) who is related to the adopted person by blood (including half-blood) or marriage. 30
- (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.
- (4) In that section, regulations means regulations made by the Registrar General with the approval of the Chancellor of the Exchequer, and “prescribed” means prescribed by such regulations. 35

General

79 Interpretation

- (1) In this Chapter –
- “records” includes certified copies kept by the Registrar General of entries in any register of births, 40
 - “registers of live-births” means the registers of live-births made under the Births and Deaths Registration Act 1953.

- (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

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ADOPTIONS WITH A FOREIGN ELEMENT

Bringing children into and out of the United Kingdom

80 Restriction on bringing children in

- (1) This section applies where a person who is habitually resident in the British Islands (the “British resident”) – 10
- (a) brings, or causes another to bring, a child who is habitually resident outside the British Islands 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 six months ending with that time. 15
- 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 – 20
- (a) the adopters or (as the case may be) prospective adopters are parents, relatives or guardians of the child (or one of them is),
 - (b) the British resident is a step-parent of the child,
 - (c) 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 British Islands, whether or not the adoption is – 25
- (a) an adoption within the meaning of Chapter 4, or
 - (b) a full adoption (within the meaning of section 84(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 – 30
- (a) to apply to an adoption agency (including a Scottish or Northern Irish adoption agency) in the prescribed manner for an assessment of his suitability to adopt the child, and 35
 - (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 provide for any provision of Chapter 3 to apply with modifications or not to apply. 40

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- (7) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, he is guilty of an offence if—
- (a) he has not complied with any requirement imposed by virtue of subsection (4), or 5
 - (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, 10
 - (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.
- (9) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Secretary of State, after consultation with the Assembly. 15
- 81 Giving parental responsibility prior to adoption abroad**
- (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 British Islands, make an order giving parental responsibility for the child to them. 20
- (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 England and Wales 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 requirements prescribed by regulations are satisfied. 25
- (4) An application for an order under this section may not be made unless at all times during the preceding 10 weeks the child’s home was with the applicant or, in the case of an application by a married couple, both of them.
- (5) Section 44(2) to (4) has effect in relation to an order under this section as it has effect in relation to adoption orders. 30
- (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.
- (7) In this section, “regulations” means regulations made by the Secretary of State, after consultation with the Assembly. 35
- 82 Restriction on taking children out**
- (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 British Islands for the purpose of adoption unless the condition in subsection (2) is met. 40
- (2) The condition is that—

- (a) the proposed adopters are parents, relatives or guardians of the child (or one of them is),
 - (b) the proposed adopter is a step-parent of the child,
 - (c) the proposed adopters have parental responsibility for the child by virtue of an order under section 81, 5
 - (d) the child is removed under the authority of an order under section 49 of the Adoption (Scotland) Act 1978 or Article 57 of the Adoption (Northern Ireland) Order 1987.
- (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 he – 10
- (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 15
 - (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. 20
- (5) Where a person is charged with an offence under subsection (4) of causing a person to take any step mentioned in paragraph (a) or (b) of subsection (3), it is a defence for him to prove that he neither knew nor had reasonable cause to believe that the step taken would contravene the paragraph in question.
- (6) A person guilty of an offence under this section is liable – 25
- (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 – 30
- (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 35
 - (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.

Overseas adoptions

83 Overseas adoptions

- (1) In this Act, “overseas adoption” means – 40
- (a) an adoption of a description specified by an order made by the Secretary of State, or
 - (b) an old overseas adoption.
- (2) The description specified by the order must be a description of adoptions of children which – 45

- (a) appear to the Secretary of State to be effected under the law of any country or territory outside the British Islands,
- (b) are not Convention adoptions, and
- (c) meet any requirements prescribed by regulations made by the Secretary of State.

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“Children” includes persons who were children at the time the adoption was applied for, and “regulations” means regulations made by the Secretary of State, after consultation with the Assembly.

- (3) An old overseas adoption means an overseas adoption within the meaning of the Adoption Act 1976 effected before the commencement of this section.
- (4) An order under this section may contain provision as to the manner in which evidence of any overseas adoption may be given.

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Miscellaneous

84 Modification of section 64 for Convention adoptions

- (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 64(2) 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, sections 59 and 60 of the Family Law Act 1986 (declarations under Part 3 of that Act as to marital status) apply as they apply in relation to a direction under that Part and an application for such a direction.

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85 Annulment etc. of overseas or Convention adoptions

- (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 87 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

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- (b) decide the extent, if any, to which a determination under section 87 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 87 is to be treated, for the purposes of those proceedings, as invalid on either of the grounds mentioned in subsection (2)(a). 5
 - (4) Subject to the preceding provisions, the validity of a Convention adoption, Convention adoption order or overseas adoption or a determination under section 87 cannot be called in question in proceedings in any court in England and Wales. 10
- 86 Section 85: supplementary**
- (1) Any application for an order under section 85 or a decision under subsection (2)(b) or (3) of that section must be made in the prescribed manner and within any prescribed period.
 - (2) No application may be made under section 85(1) in respect of an adoption unless immediately before the application is made – 15
 - (a) the person adopted, or
 - (b) the adopter or (in the case of a married couple) both of them, habitually reside in England and Wales.
 - (3) In deciding in pursuance of section 85 whether such an authority as is mentioned in section 87 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. 20
- 87 Overseas determinations and orders** 25
- (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 colony 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 30
 - (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. 35
 - (3) Subsection (2) is subject to section 85 and to any subsequent determination having effect under that subsection.

CHAPTER 7

MISCELLANEOUS

*Restrictions***88 Restriction on arranging adoptions, etc.**

- (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). 5
- (2) The steps are—
- (a) asking a person other than an adoption agency to provide a child for adoption, 10
 - (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, 15
 - (f) receiving a child handed over to him 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, 20
 - (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. 25
- (4) The condition is that—
- (a) the prospective adopters are parents, relatives or guardians of the child (or one of them is), or 30
 - (b) the prospective adopter is a step-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. 35
- (6) The Secretary of State may, after consultation with the Assembly, by order make any amendments of subsections (1) to (4), and any consequential amendments of this Act, which he considers necessary or expedient.
- (7) In this section—
- (a) “agreement” includes an arrangement (whether or not enforceable), 40
 - (b) “prescribed” means prescribed by regulations made by the Secretary of State after consultation with the Assembly.

89 Offence of breaching restrictions under section 88

- (1) If a person contravenes section 88(1), he 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) Where a person is charged with an offence of taking the step mentioned in subsection (2)(f) of that section, it is a defence for him to prove that he neither knew nor had reasonable cause to believe that the child was handed over to him in contravention of subsection (2)(e) of that section. 5
- (3) Where a person is charged with an offence of causing a person to take any of the steps mentioned in paragraphs (a) to (h) of subsection (2) of that section, it is a defence for him to prove that he neither knew nor had reasonable cause to believe that the step taken would contravene the paragraph in question. 10
- (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. 15

90 Restriction on reports

- (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. 20
“Prescribed” means prescribed by regulations made by the Secretary of State after consultation with the Assembly.
- (2) If a person –
 - (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, 25he is guilty of an offence.
- (3) If a person who works for an adoption society –
 - (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, 30the person who manages the society is also guilty of the offence.
- (4) Where a person is charged with an offence under subsection (2)(b), it is a defence for him to prove that he neither knew nor had reasonable cause to believe that the report would be, or had been, prepared in contravention of subsection (1). 35
- (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.

91 Prohibition of certain payments

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- (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,

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- (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 British Islands 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 paragraphs (c), (d), (e), (g) and (h) and (so far as relating to those paragraphs) (i) of section 88(2), 5
- (e) preparing, causing to be prepared or submitting a report the preparation of which contravenes section 90(1).
- (2) In this section and section 92, removing a child from the United Kingdom has the same meaning as in section 82. 10
- (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, 15
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.
- 92 Excepted payments 20**
- (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 (Scotland) Act 1978 or the Adoption (Northern Ireland) Order 1987.
- (2) A payment is an excepted payment if it is made to a registered adoption society by – 25
- (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 society 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 he has made or proposes to make for an adoption order, a placement order, or an order under section 25 or 81. 30
- (4) A payment made as mentioned in section 91(1)(c) is an excepted payment if – 35
- (a) the condition in section 82(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.
- 93 Sections 88 to 92: interpretation 40**
- In sections 88 to 92 –
- (a) “adoption agency” includes a Scottish or Northern Irish adoption agency,
- (b) “payment” includes reward,

- (c) references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.

Proceedings

94 Proceedings for offences 5

- (1) Proceedings for an offence by virtue of section 9 or 56 may not, without the written consent of the Attorney General, be taken by any person other than the registration authority.
- (2) Proceedings for an offence by virtue of this Act—
- (a) may not be brought more than three years after the commission of the offence but, subject to that, 10
 - (b) may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

95 Appeals 15

In section 94 of the 1989 Act (appeals under that Act), in subsections (1)(a) and (2), after “this Act” there is inserted “or the Adoption and Children Act 2001”.

96 Proceedings to be in private

- Proceedings under this Act—
- (a) in the High Court, may be disposed of in chambers, and 20
 - (b) in a county court, must be heard and determined in camera.

The Children and Family Court Advisory and Support Service

97 Officers of the Service

- (1) For the purposes of any relevant application, rules must provide for the appointment in prescribed cases of an officer of the Children and Family Court Advisory and Support Service (“the Service”)—
- (a) to act on behalf of the child upon the hearing of the application, with the duty of safeguarding the interests of the child in the prescribed manner,
 - (b) to witness documents which signify consent to placement or adoption, 30
 - (c) to perform other prescribed duties.
- (2) A person who—
- (a) in the case of an application for the making, varying or revocation of a placement order, is employed by the local authority which made the application, or 35
 - (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 him,

is not to be appointed under subsection (1); but, subject to that, rules may provide for the appointment of the same person to act under both paragraphs (a) and (b) of subsection (1) for the purposes of a relevant application.

- (3) In this section, “relevant application” means an application for –
- (a) the making, varying or revocation of a placement order, 5
 - (b) the making of an adoption order, or
 - (c) the making of an order under section 81.
- (4) Rules may make provision as to the assistance which the court may require an officer of the Service to give to it.

98 Right of officers of the Service to have access to adoption agency records 10

- (1) Where an officer of the Service has been appointed to act under section 97(1), he 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. 15
- (2) Where an officer of the Service takes a copy of any record which he 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 he makes to the court in the proceedings in question, or
 - (b) evidence which he gives in those proceedings. 20
- (3) Subsection (2) has effect regardless of any enactment or rule of law which would otherwise prevent the record in question being admissible in evidence.

Evidence

99 Evidence of consent

- (1) If a document signifying any consent which is required by this Part to be given is witnessed in accordance with rules, it is to be admissible in evidence without further proof of the signature of the person by whom it was executed. 25
- (2) A document signifying any such consent which purports to be witnessed in accordance with rules 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. 30

Scotland, Northern Ireland and the Islands

100 Effect of certain Scottish orders and provisions

- (1) A Scottish adoption order has effect in England and Wales 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. 35
- (2) An order made under section 18 of the Adoption (Scotland) Act 1978 (freeing orders), and the revocation or variation of such an order under section 20 or 21 of that Act, have effect in England and Wales as they have effect 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. 40

- (3) Any person who –
- (a) contravenes section 27(1) of that Act (removal where adoption agreed etc.), or
 - (b) contravenes section 28(1) or (2) of that Act (removal where applicant provided home),
- 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
- (4) Orders made under section 29 of that Act (order to return or not to remove child) are to have effect in England and Wales as if they were orders of the High Court under section 40 of this Act. 10

101 Effect of certain Northern Irish orders and provisions

- (1) A Northern Irish adoption order has effect in England and Wales as it has in Northern Ireland.
- (2) Any person who – 15
- (a) contravenes Article 28(1) or (2) of the Adoption (Northern Ireland) Order 1987 (removal where adoption agreed etc.), or
 - (b) contravenes Article 29(1) or (2) of that Order (removal where applicant provided home),
- 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. 20
- (3) Orders made under Article 30 of that Order (order to return or not to remove child) are to have effect in England and Wales as if they were orders of the High Court under section 40 of this Act. 25

102 Use of adoption records from other parts of the British Islands

- Any document which is receivable as evidence of any matter –
- (a) in Scotland under section 45(2) of the Adoption (Scotland) Act 1978,
 - (b) in Northern Ireland under Article 63(1) of the Adoption (Northern Ireland) Order 1987, or
 - (c) in the Isle of Man or any of the Channel Islands under an enactment corresponding to section 74(3) of this Act,
- is also receivable as evidence of that matter in England and Wales. 30

103 Orders made in the Channel Islands or the Isle of Man

- (1) Regulations may provide for orders prescribed by the regulations which – 35
- (a) are made by a court in the Isle of Man or in any of the Channel Islands, and
 - (b) appear to the Secretary of State to correspond in their effect to orders which may be made under this Part,
- to have effect as if they were orders made under this Part of a kind prescribed by the regulations. 40
- (2) The regulations may modify any provision of this Part, as it applies to any order made in the Isle of Man or in any of the Channel Islands.

- (3) In this section, “regulations” means regulations made by the Secretary of State after consultation with the Assembly.

General

104 Avoiding delay

- (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)) – 5
- (a) draw up a timetable with a view to determining such a question without delay, and 10
- (b) give such directions as it considers appropriate for the purpose of ensuring that the timetable is adhered to.
- (2) Rules may –
- (a) prescribe periods within which prescribed steps must be taken in relation to such proceedings, and 15
- (b) make other provision with respect to such proceedings for the purpose of ensuring that such questions are determined without delay.

105 Service of notices etc.

Any notice or information required to be given by virtue of this Act may be given by post. 20

PART 2

AMENDMENTS OF THE CHILDREN ACT 1989

106 Parental responsibility of unmarried father

- (1) Section 4 of the 1989 Act (acquisition of responsibility by the father of a child who is not married to the child’s mother) is amended as follows. 25
- (2) In subsection (1) (cases where parental responsibility is acquired), for the words after “birth” there is substituted “, the father shall acquire parental responsibility for the child if –
- (a) he becomes registered as the child’s father under any of the enactments specified in subsection (1A); 30
- (b) he and the child’s mother make an agreement (a “parental responsibility agreement”) providing for him to have parental responsibility for the child; or
- (c) the court, on his application, orders that he shall have parental responsibility for the child.” 35
- (3) After that subsection there is inserted –
- “(1A) The enactments referred to in subsection (1)(a) are –
- (a) paragraphs (a), (b) and (c) of section 10(1) and of section 10A(1) of the Births and Deaths Registration Act 1953;
- (b) paragraphs (a), (b)(i) and (c) of section 18(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965; and 40

- (c) sub-paragraphs (a), (b) and (c) of Article 14(3) of the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041 (N.I. 14)).
- (1B) The Lord Chancellor may by order amend subsection (1A) so as to add further enactments to the list in that subsection.” 5
- (4) For subsection (3) there is substituted –
- “(2A) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.
- (3) The court may make an order under subsection (2A) on the application – 10
- (a) of any person who has parental responsibility for the child; or
- (b) with the leave of the court, of the child himself,
- subject, in the case of parental responsibility acquired under subsection (1)(c), to section 12(4).”
- (5) Accordingly, in section 2(2) of the 1989 Act (a father of a child who is not married to the child’s mother shall not have parental responsibility for the child unless he acquires it in accordance with the provisions of the Act), for the words from “shall not” to “acquires it” there is substituted “shall have parental responsibility for the child if he has acquired it (and has not ceased to have it)”. 15
- (6) In section 104 of the 1989 Act (regulations and orders) – 20
- (a) in subsection (2), after “section” there is inserted “4(1B),”, and
- (b) in subsection (3), after “section” there is inserted “4(1B) or”.
- (7) Paragraph (a) of section 4(1) of the 1989 Act, as substituted by subsection (2) of this section, does not confer parental responsibility on a man who was registered under an enactment referred to in paragraph (a), (b) or (c) of section 4(1A) of that Act, as inserted by subsection (3) of this section, before the commencement of subsection (3) in relation to that paragraph. 25

107 Acquisition of parental responsibility by step-parent

After section 4 of the 1989 Act there is inserted –

- “4A Acquisition of parental responsibility by step-parent 30**
- (1) Where a child’s parent (“parent A”) who has parental responsibility for the child is married to a person who is not the child’s parent (“the step-parent”) –
- (a) parent A or, if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or 35
- (b) the court may, on the application of the step-parent, order that the step-parent shall have parental responsibility for the child.
- (2) An agreement under subsection (1)(a) is also a “parental responsibility agreement”, and section 4(2) applies in relation to such agreements as it applies in relation to parental responsibility agreements under section 4. 40

- (3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application –
- (a) of any person who has parental responsibility for the child; or
 - (b) with the leave of the court, of the child himself. 5
- (4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.”
- 108 Section 8 orders: local authority foster parents**
- In section 9 of the 1989 Act (restrictions on making section 8 orders) – 10
- (a) in subsection (3)(c), for “three years” there is substituted “one year”, and
 - (b) subsection (4) is omitted.
- 109 Residence orders: extension to age of 18**
- (1) In section 12 of the 1989 Act (residence orders and parental responsibility), after subsection (4) there is inserted – 15
- “(5) The power of a court to make a residence order in favour of any person who is not the parent or guardian of the child concerned includes power to direct, at the request of that person, that the order continue in force until the child reaches the age of eighteen (unless the order is brought to an end earlier); and any power to vary a residence order is exercisable accordingly. 20
- (6) Where a residence order includes such a direction, an application to vary or discharge the order may only be made, if apart from this subsection the leave of the court is not required, with such leave”. 25
- (2) In section 9 of that Act (restrictions on making section 8 orders), at the beginning of subsection (6) there is inserted “Subject to section 12(5)”.
- (3) In section 91 of that Act (effect and duration of orders), in subsection (10), after “9(6)” there is inserted “or 12(5)”.
- 110 Special guardianship orders** 30
- (1) After section 14 of the 1989 Act there is inserted –
- “Special guardianship orders*
- 14A Special guardianship orders**
- (1) A “special guardianship order” is an order appointing one or more individuals to be a child’s “special guardian” (or special guardians). 35
- (2) A special guardian –
- (a) must be aged eighteen or over; and
 - (b) must not be a parent of the child in question, and subsections (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. 5
- (4) Section 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 a section 8 order.
- (5) The individuals who are entitled to apply for a special guardianship order with respect to a child are – 10
- (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 subsection (5)(b) or (c) of section 10 (as read with subsection (10) of that section). 15
- (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 subsection (3)(a) or (b) (or more than one such individual jointly); or 20
 - (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 an application under subsection (3) or (6)(a) unless, before the beginning of the period of three months ending with the date of the application, he has given written notice of his intention to make the application – 25
- (a) if the child in question is being looked after by a local authority, to that local authority, or 30
 - (b) otherwise, to the local authority in whose area the individual is ordinarily resident.
- (8) On receipt of such a notice, the local authority must investigate the matter and prepare a report for the court dealing with –
- (a) the suitability of the applicant to be a special guardian; 35
 - (b) such matters (if any) as may be prescribed by the Secretary of State; and
 - (c) any other matter which the local authority consider to be relevant.
- (9) The court may itself ask a local authority to conduct such an investigation and prepare such a report, and the local authority must do so. 40
- (10) The local authority may make such arrangements as they see fit for any person to act on their behalf in connection with conducting an investigation or preparing a report referred to in subsection (8) or (9). 45
- (11) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (8).

- (12) Subsections (8) and (9) of section 10 apply in relation to special guardianship orders as they apply in relation to section 8 orders.

14B Special guardianship orders: making

- (1) Before making a special guardianship order, the court must consider whether, if the order were made, a contact order should also be made with respect to the child. 5
- (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 section 14C(3)(b), either generally or for specified purposes. 10

14C Special guardianship orders: effect

- (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 15
 - (b) subject to any later order made under this Act, 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) Subsection (1) does not affect— 20
- (a) the operation of any enactment 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. 25
- (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 him 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. 30
- (4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of his.
- (5) If the child with respect to whom a special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to— 35
- (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. 40

14D Special guardianship orders: variation and discharge

- (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; 5
 - (c) any individual in whose favour a residence order is in force with respect to the child;
 - (d) the child himself; or
 - (e) a local authority designated in a care order with respect to the child. 10
- (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 subsection (1). 15
- (3) The child, and any parent or guardian of his, must obtain the leave of the court before making an application under subsection (1).
- (4) Where the person applying for leave to make an application under subsection (1) is the child, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application under subsection (1). 20
- (5) The court may not grant leave to a parent or guardian of the child unless it is satisfied that there has been a significant change of circumstances since the making of the special guardianship order.
- (6) A parent or guardian of the child may not make an application under subsection (1) before the end of the period of one year beginning with the date on which the special guardianship order was made. 25

14E Special guardianship orders: supplementary

- (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 subsection (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. 35
- (2) Subsection (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 in subsection (2) of section 11 applies for the purposes of this section as it applies for the purposes of that. 40
- (4) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.
- (5) Section 11(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to section 8 orders. 45

14F Special guardianship support services

- (1) Each local authority must make arrangements for the provision within their area of special guardianship support services, which means –
- (a) counselling, advice and information in connection with special guardianship; and 5
 - (b) such other services as are prescribed (which may include financial support).
- (2) A local authority may, and in prescribed cases must, at the request of any of the following persons –
- (a) a child with respect to whom a special guardianship order is in force; 10
 - (b) a special guardian,
- carry out an assessment of that person’s need for special guardianship support services.
- (3) Where, as a result of an assessment, a local authority decide that a person has needs for special guardianship support services, they must then decide whether to provide any such services to that person. 15
- (4) If –
- (a) a local authority decide to provide any special guardianship support services to a person, and 20
 - (b) the circumstances fall within a prescribed description,
- the local authority must prepare a plan in accordance with which special guardianship support services are to be provided to him, and keep the plan under review.
- (5) The Secretary of State 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. 25
- (6) 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; 30
 - (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; 35
 - (d) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;
 - (e) as to the circumstances in which a local authority may provide special guardianship support services subject to conditions (including conditions as to payment for the support or the repayment of financial support); 40
 - (f) as to the consequences of conditions imposed by virtue of paragraph (e) not being met (including the recovery of any financial support provided); 45
 - (g) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority’s area;

- (h) as to the circumstances in which a local authority may recover from another local authority the expenses of providing special guardianship support services to any person.
 - (7) A local authority may provide special guardianship support services (or any part of them) by securing their provision by – 5
 - (a) another local authority; or
 - (b) a person within a description prescribed in regulations of persons who may provide special guardianship support services,and may also arrange with any such authority or person for that other authority or that person to carry out the local authority’s functions in relation to assessments under this section. 10
 - (8) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment. 15
 - (9) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority under this section as it applies in relation to the exercise of functions of a local authority under Part 3.
- 14G Special guardianship support services: representations** 20
- (1) Every local authority shall establish a procedure for considering representations (including complaints) made to them by –
 - (a) a child in relation to whom a special guardianship order is in force; or
 - (b) a special guardian, 25about the discharge of their functions under section 14F in relation to him.
 - (2) Regulations may be made by the Secretary of State imposing time limits on the making of representations under subsection (1).
 - (3) In considering representations under subsection (1), a local authority shall comply with regulations (if any) made by the Secretary of State for the purposes of this subsection.” 30
- (2) The 1989 Act is amended as follows.
 - (3) In section 1 (welfare of the child), in subsection (4)(b), after “discharge” there is inserted “a special guardianship order or”. 35
 - (4) In section 5 (appointment of guardians) –
 - (a) in subsection (1) –
 - (i) in paragraph (b), for “or guardian” there is substituted “, guardian or special guardian”, and
 - (ii) at the end of paragraph (b) there is inserted “; or 40
 - (c) paragraph (b) does not apply, and the child’s only or last surviving special guardian dies.”,
 - (b) in subsection (4), at the end there is inserted “; and a special guardian of a child may appoint another individual to be the child’s guardian in the event of his death”, and 45

- (c) in subsection (7), at the end of paragraph (b) there is inserted “or he was the child’s only (or last surviving) special guardian”.

111 Inquiries by local authorities into representations

- (1) In section 24D of the 1989 Act (representations: sections 23A to 24B), after subsection (1) there is inserted – 5
 “(1A) Regulations may be made by the Secretary of State imposing time limits on the making of representations under subsection (1).”
- (2) Section 26 of that Act (procedure for considering other representations) is amended as follows.
- (3) In subsection (3) (which makes provision as to the persons by whom, and the matters in respect of which, representations may be made), for “functions under this Part” there is substituted “qualifying functions”. 10
- (4) After that subsection there is inserted –
 “(3A) The following are qualifying functions for the purposes of subsection (3) – 15
 (a) functions under this Part,
 (b) such functions under Part 4 or 5 as are specified by the Secretary of State in regulations.”
- (5) In subsection (4) (procedure to require involvement of independent person), after paragraph (b) there is inserted – 20
 “but this subsection is subject to subsection (5A).”
- (6) After that subsection there is inserted –
 “(4A) Regulations may be made by the Secretary of State imposing time limits on the making of representations under this section.”
- (7) After subsection (5) there is inserted – 25
 “(5A) Regulations under subsection (5) may provide that subsection (4) does 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.” 30

112 Care plans

- (1) In section 31 of the 1989 Act (care and supervision orders), after subsection (3) there is inserted –
 “(3A) No care order may be made with respect to a child until the court has considered a plan for the future care of the child prepared under section 31A”. 35

- (2) After that section there is inserted –

“31A Care orders: care plans

- (1) Where an application is made on which a care order might be made with respect to a child, the appropriate local authority must, within 40

- such time as the court may direct, prepare a plan for the future care of the child (in this Act referred to as a “care plan”).
- (2) While the application is pending, or a care order made on the application is in force, the authority must keep any care plan prepared by them under review and, if they are of the opinion some change is required, revise the plan, or make a new plan, accordingly. 5
- (3) A care plan must give any prescribed information and do so in the prescribed manner.
- (4) For the purposes of this section, the appropriate local authority, in relation to a child in respect of whom a care order might be made, is the local authority proposed to be designated in the order. 10
- (5) In section 31(3A) and this section, references to a care order do not include an interim care order.”
- (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 local authority designated in the order, and 15
- (b) on the day on which that subsection comes into force the order is in force, or would be in force but for section 28(1) of this Act, 20
- the plan is to have effect as if made under section 31A of the Children Act 1989.

PART 3

MISCELLANEOUS AND FINAL PROVISIONS

CHAPTER 1

MISCELLANEOUS 25

Advertisements

113 Restriction on advertisements etc.

- (1) A person must not—
- (a) publish or distribute an advertisement or information to which this section applies, or 30
- (b) cause such an advertisement or information to be published or distributed.
- (2) This section applies to an advertisement indicating that—
- (a) the parent or guardian of a child wants the child to be adopted,
- (b) a person wants to adopt a child, 35
- (c) a person other than an adoption agency is willing to take any step mentioned in paragraphs (a) to (e), (g) and (h) and (so far as relating to those paragraphs) (i) of section 88(2), or
- (d) a person is willing to remove a child from the United Kingdom for the purposes of adoption. 40
- (3) This section applies to—

-
- (a) information about how to do anything which, if done, would constitute an offence under section 82 or 89, section 11 or 50 of the Adoption (Scotland) Act 1978 or Article 11 or 58 of the Adoption (Northern Ireland) Order 1987 (whether or not the information includes a warning that doing the thing in question may constitute an offence), 5
 - (b) information about a particular child as a child available for adoption.
 - (4) For the purposes of this section and section 114 –
 - (a) publishing or distributing an advertisement or information means publishing it or distributing it to the public and includes doing so by electronic means (for example, by means of the internet), 10
 - (b) the public includes selected members of the public as well as the public generally or any section of the public.
 - (5) Subsection (1) does not apply to publication or distribution by or on behalf of an adoption agency.
 - (6) The Secretary of State may by order make any amendments of this section which he considers necessary or expedient in consequence of any developments in technology relating to publishing or distributing advertisements or other information by electronic or electro-magnetic means. 15
 - (7) Before exercising the power conferred by subsection (6), the Secretary of State must consult the Scottish Ministers, the Department of Health, Social Services and Public Safety and the Assembly. 20
 - (8) In this section –
 - (a) “adoption agency” includes a Scottish or Northern Irish adoption agency,
 - (b) references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands. 25

114 Offence of breaching restriction under section 113

- (1) A person who contravenes section 113(1) is guilty of an offence.
- (2) It is a defence for a person charged with an offence under this section (other than one of distributing an advertisement or information, or causing it to be distributed, by electronic means) to prove that he neither knew, nor had reasonable cause to believe, that this section applied to the advertisement or information. 30
- (3) Where the offence charged is one of distributing an advertisement or information, or causing it to be distributed, by electronic means, it is a defence for the person charged with the offence to prove –
 - (a) that he did not know that what was distributed was an advertisement or information to which this section applies, or
 - (b) that, when he became aware of that fact, he was not able to prevent its further distribution. 40
- (4) 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.

Adoption and Children Act Register

115 Adoption and Children Act Register

- (1) *The Secretary of State may establish and maintain a register, to be called the 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,* 5
 - (b) *prescribed information about persons included in the register in pursuance of paragraph (a) in respect of things occurring after their inclusion.*
- (2) *Prescribed information entered in the register may be disclosed –*
 - (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,* 10
 - (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.* 15
- (3) *Prescribed information entered in the register, or compiled from information entered in the register, may be disclosed to any prescribed person for use for statistical or research purposes, or for other prescribed purposes.*
- (4) *The register is not to be open to public inspection or search.*
- (5) *Regulations may make provision about the retention of information in the register.* 20
- (6) *Regulations may prescribe the steps to be taken by adoption agencies in respect of information received by them under subsection (2).*
- (7) *Information is to be kept in the register in any form the Secretary of State considers appropriate.* 25

116 Use of an organisation to establish etc. the register

- (1) *The Secretary of State may, with the Assembly’s agreement, make an arrangement with an organisation under which his function 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 his behalf.* 30
- (2) *The arrangement may include provision for payments to be made to the organisation by the Secretary of State.*
- (3) *Regulations may authorise an organisation with which an arrangement is made under this section 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.* 35
- (4) *If the Secretary of State 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 general or special directions given by the Secretary of State with the Assembly’s agreement.* 40
- (5) *In this section, “organisation” includes a public body and a private or voluntary organisation.*

- (6) References in sections 117 to 119 to the registration organisation are to any organisation for the time being performing functions in respect of the register.

117 Supply of information for the register

- (1) Regulations may require adoption agencies to give prescribed information to the Secretary of State or the registration organisation for entry in the register. 5
- (2) Information is to be given to the Secretary of State or the registration organisation when required by 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 fee, calculated in accordance with the regulations, to the Secretary of State or the registration organisation. 10
- (4) But an adoption agency is not to disclose any information to the Secretary of State 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, 15
- (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. 20

118 Disclosure of information

- (1) Information entered in the register, or compiled from information entered in the register, may only be disclosed to a person –
- (a) by the Secretary of State or the registration organisation, and
- (b) under section 115(2) or (3). 25
- (2) Subsection (1) does not apply –
- (a) to any information disclosed with the authority of the Secretary of State, or
- (b) to any prescribed information disclosed to the Assembly.
- (3) Information disclosed to any person under section 115(2) or (3) may be given on any prescribed terms or conditions. 30
- (4) Regulations may, in prescribed circumstances, require a fee, calculated in accordance with the regulations, to be paid to the Secretary of State or the registration organisation –
- (a) by a prescribed adoption agency in respect of information disclosed under section 115(2), or 35
- (b) by a person to whom information is disclosed under section 115(3).
- (5) 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.
- (6) A person guilty of an offence under subsection (5) 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. 40

119 Supplementary

- (1) In sections 115 to 118 and this section –
 - (a) “prescribed” means prescribed by regulations,
 - (b) “the register” means the Adoption and Children Act Register,
 - (c) “regulations” means regulations made jointly by the Secretary of State and the Assembly. 5
- (2) For the purposes of sections 115 to 118 –
 - (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. 10
- (3) Nothing authorised or required to be done by virtue of sections 115 to 118 constitutes an offence under sections 89, 90 or 91.
- (4) Regulations may, for the purpose of giving assistance in finding persons with whom children may be placed for purposes other than adoption, apply any of the provisions of sections 115 to 118 with or without modifications. 15

Other miscellaneous provisions

120 Scottish restriction on bringing children into United Kingdom

- (1) For section 50A of the Adoption (Scotland) Act 1978 (restriction on bringing children into the United Kingdom for adoption) there is substituted – 20

“50A Restriction on bringing children into the United Kingdom

- (1) This section applies where a person who is habitually resident in the British Islands (the “British resident”) –
 - (a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption by the British resident; or 25
 - (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 six months ending with that time. 30
- (2) In subsection (1) above 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.
- (3) This section does not apply if – 35
 - (a) the adopters or (as the case may be) prospective adopters are parents, relatives or guardians of the child (or one of them is);
 - (b) the British resident is a step-parent of the child;
 - (c) the child is intended to be adopted under a Convention adoption order. 40
- (4) 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 British Islands, whether or not the adoption is –

<ul style="list-style-type: none"> <li style="margin-left: 40px;">(a) an adoption within the meaning of Part IV; or <li style="margin-left: 40px;">(b) a full adoption (as defined in section 39(2A)). 	
<ul style="list-style-type: none"> (5) 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 – <ul style="list-style-type: none"> (a) to apply to an adoption agency in the prescribed manner for an assessment of his suitability to adopt the child; and (b) to give the agency any information it may require for the purpose of the assessment. 	5
<ul style="list-style-type: none"> (6) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies. 	10
<ul style="list-style-type: none"> (7) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, he is guilty of an offence if – <ul style="list-style-type: none"> (a) he has not complied with any requirement imposed by virtue of subsection (5); or (b) any condition required to be met by virtue of subsection (6) is not met, before that time, or before any later time which may be prescribed. 	15 20
<ul style="list-style-type: none"> (8) A person guilty of an offence under this section is liable – <ul style="list-style-type: none"> (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. 	25
<ul style="list-style-type: none"> (9) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Scottish Ministers.”. 	
<ul style="list-style-type: none"> (2) In section 65 of that Act (interpretation), in subsection (1), in the definition of “adoption agency”, for “and 27” there is substituted “, 27 and 50A”. 	30
121 Adoption and fostering: criminal records	
<ul style="list-style-type: none"> (1) Part 5 of the Police Act 1997 (certificates of criminal records) is amended as follows. (2) In section 113 (criminal record certificates), in subsection (3A), for “his suitability” there is substituted “the suitability of the applicant, or of a person living in the same household as the applicant, to be a foster parent or”. (3) In section 115 (enhanced criminal record certificates), in subsection (6A), for “his suitability” there is substituted “the suitability of the applicant, or of a person living in the same household as the applicant, to be a foster parent or”. 	35
122 Payment of grants in connection with welfare services	40
<ul style="list-style-type: none"> (1) Section 93 of the Local Government Act 2000 (payment of grants for welfare services) is amended as follows. 	

- (2) In subsection (1) (payment of grants by the Secretary of State), for the words from “in providing” to the end there is substituted –
- “(a) in providing, or contributing to the provision of, such welfare services as may be determined by the Secretary of State, or
 - (b) in connection with any such welfare services.” 5
- (3) In subsection (2) (payment of grants by the Assembly), for the words from “in providing” to the end there is substituted –
- “(a) in providing, or contributing to the provision of, such welfare services as may be determined by the Assembly, or
 - (b) in connection with any such welfare services.” 10

123 Extension of the Convention to British Overseas Territories

- (1) Her Majesty may by Order in Council provide for giving effect to the Convention in any British Overseas Territory.
- (2) An Order in Council under subsection (1) in respect of any British Overseas Territory may, in particular, make any provision corresponding to provision which in relation to any part of Great Britain is made by the Adoption (Intercountry Aspects) Act 1999 or may be made by regulations under section 1 of that Act. 15
- (3) Where the Convention has effect in any British Overseas Territory, Her Majesty may by Order in Council provide for section 1 of the British Nationality Act 1981 (acquisition of citizenship by birth or adoption) to have effect as if the reference in subsection (5A) of that section to residence in the United Kingdom included a reference to residence in that Territory. 20

Amendments, etc.

124 Amendments, transitional provisions, savings and repeals 25

- (1) Schedule 3 (minor and consequential amendments) is to have effect.
- (2) Schedule 4 (transitional provisions and savings) is to have effect.
- (3) The enactments set out in Schedule 5 are repealed to the extent specified.

CHAPTER 2

FINAL PROVISIONS 30

125 Orders, rules and regulations

- (1) Any power to make subordinate legislation conferred by this Act on the Lord Chancellor, the Secretary of State, the Scottish Ministers, the Assembly or the Registrar General is exercisable by statutory instrument.
- (2) A statutory instrument containing subordinate legislation made under any provision of this Act (other than section 14 or 133 or an instrument to which subsection (3) applies) is to be subject to annulment in pursuance of a resolution of either House of Parliament. 35
- (3) A statutory instrument containing subordinate legislation –
- (a) under section 88(6), 90 or 113(6), or 40

(b) which adds to, replaces or omits any part of the text of an Act, is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

- (4) Subsections (2) and (3) do not apply to an Order in Council or to subordinate legislation made by the Scottish Ministers or the Assembly. 5
- (5) Subordinate legislation made under this Act may make different provision for different purposes.
- (6) A power to make subordinate legislation under this Act (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to – 10
- (a) those cases subject to specified exceptions, or
- (b) an particular case or class of case.
- (7) In this section, “subordinate legislation” does not include a direction.

126 Rules of procedure

- (1) The Lord Chancellor may make rules in respect of any matter to be prescribed by rules made by virtue of this Act and dealing generally with all matters of procedure. 15
- (2) Subsection (1) does not apply in relation to proceedings before magistrates’ courts, but the power to make rules conferred by section 144 of the Magistrates’ Courts Act 1980 includes power to make provision in respect of any of the matters mentioned in that subsection. 20
- (3) In the case of an application for a placement order, for the variation or revocation of such an order, or for an adoption order, the rules must require any person mentioned in subsection (4) to be notified – 25
- (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 20 (or would be required but for subsection (3)(b) of that section) or, if no such person can be found, any relative prescribed by rules who can be found, 30
- (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 20 (or would have been required but for subsection (3)(b) of that section), 35
- (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 45 (or would be required but for subsection (2)(c) of that section) or, if no such person can be found, any relative prescribed by rules who can be found, 40
- (ii) every person who has consented to the making of the order under section 19 and whose notice under subsection (4) of that section has effect at the prescribed time, 45

(iii) every person who, if leave were given under section 45(5), would be entitled to oppose the making of the order.

- (5) Rules made in respect of magistrates' courts may provide—
- (a) for enabling any fact tending to establish the identity of a child with a child to whom a document relates to be proved by affidavit, and 5
 - (b) for excluding or restricting in relation to any facts that may be so proved the power of a justice of the peace to compel the attendance of witnesses.

127 Supplementary and consequential provision

- (1) The appropriate Minister may by order make— 10
- (a) any supplementary, incidental or consequential provision,
 - (b) any transitory, transitional or saving provision,
- which he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) Subsection (3) applies to any power of the Lord Chancellor, the Secretary of State or the Assembly to make regulations, rules or an order by virtue of any other provision of this Act. 15
- (3) The power may be exercised so as to make—
- (a) any supplementary, incidental or consequential provision,
 - (b) any transitory, transitional or saving provision, 20
- which the person exercising the power considers necessary or expedient.
- (4) The provision which may be made under subsection (1) or (3) includes provision modifying Schedule 4 or amending or repealing any enactment or instrument.

128 Offences by bodies corporate and unincorporated bodies 25

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, that person as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly. 30
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director of a body corporate.
- (3) Where an offence under this Act committed by an unincorporated body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly. 35

129 General interpretation, etc. 40

- (1) In this Act—
“appropriate Minister” means —

-
- (a) in relation to England, Scotland or Northern Ireland, the Secretary of State,
- (b) in relation to Wales, the Assembly,
and in relation to England and Wales means the Secretary of State and the Assembly acting jointly, 5
- “the Assembly” means the National Assembly for Wales,
- “body” includes an unincorporated body,
- “by virtue of” includes “by” and “under”,
- “child”, except where used to express a relationship, means a person who has not attained the age of 18 years, 10
- “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 order” means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (regulations giving effect to the Convention), is made as a Convention adoption order, 15
- “Convention country” means a country or territory in which the Convention is in force,
- “court” means, subject to any provision made by virtue of Part 1 of Schedule 11 to the 1989 Act, the High Court, a county court or a magistrates’ court, 20
- “guardian” has the same meaning as in the 1989 Act and includes a special guardian within the meaning of that Act,
- “information” means information recorded in any form, 25
- “local authority” means any unitary authority, or any county council so far as they are not a unitary authority,
- “Northern Irish adoption agency” means an adoption agency within the meaning of Article 3 of the Adoption (Northern Ireland) Order 1987,
- “Northern Irish adoption order” means an order made, or having effect as if made, under Article 12 of the Adoption (Northern Ireland) Order 1987, 30
- “notice” means a notice in writing,
- “prescribed” (except in relation to matters to be prescribed by regulations or an order) means prescribed by rules, 35
- “registration authority” (in Part 1) has the same meaning as in the Care Standards Act 2000,
- “regulations” means regulations made by the appropriate Minister, unless they are required to be made by the Lord Chancellor, the Secretary of State or the Registrar General, 40
- “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,
- “rules” means rules made under section 126(1) or made by virtue of section 126(2) under section 144 of the Magistrates’ Courts Act 1980,
- “Scottish adoption agency” means an adoption agency within the meaning of section 1 of the Adoption (Scotland) Act 1978, 45
- “Scottish adoption order” means an order made, or having effect as if made, under section 12 of the Adoption (Scotland) Act 1978,
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978, 50
- “unitary authority” means –

-
- (a) the council of any county so far as they are the council for an area for which there are no district councils,
- (b) the council of any district comprised in an area for which there is no county council,
- (c) the council of a county borough, 5
- (d) the council of a London borough,
- (e) the Common Council of the City of London.
- (2) In determining for the purposes of this Act with what person, or where, a child's home is or a child is placed, any absence of the child at a hospital or boarding school and any other temporary absence is to be disregarded. 10
- 130 Devolution: Wales**
- (1) The reference to the 1989 Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 is to be treated as referring to that Act as amended by virtue of this Act.
- (2) This section does not affect the power to make further Orders varying or omitting that reference. 15
- 131 Expenses**
- There shall be paid out of money provided by Parliament –*
- (a) any expenditure incurred by a Minister of the Crown by virtue of this Act,
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment. 20
- 132 Glossary**
- Schedule 6 (glossary) is to have effect.
- 133 Commencement**
- (1) This Act (except this Chapter and the provisions mentioned in subsections (3) and (4)) is to come into force on such day as the Secretary of State may by order appoint. 25
- (2) Before making an order under subsection (1) the Secretary of State must consult the Assembly.
- (3) Section 120 and paragraphs 20 to 26 and 74 to 76 of Schedule 3 and, so far as relating to those paragraphs, section 124(1) are to come into force on such day as the Scottish Ministers may by order appoint. 30
- (4) Sections 2(6), 3(4), 4 to 16, 26(3), 51(1) to (3) and 53 to 62 are to come into force on such day as the appropriate Minister may by order appoint.
- 134 Extent** 35
- (1) The amendment or repeal of an enactment, or a power to amend or repeal an enactment, has the same extent as the enactment to which it relates.
- (2) Subject to that and to the following provisions, this Act except section 123 extends to England and Wales only.

- (3) The following extend also to Scotland and Northern Ireland –
- (a) sections 40(5) to (9), 60(2) to (5), 113 and 114,
 - (b) this Chapter, except sections 126, 127(1) and 130.

135 Short title

This Act may be cited as the Adoption and Children Act 2001.

SCHEDULES

SCHEDULE 1

Section 74

REGISTRATION OF ADOPTIONS

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 Registrar General with the approval of the Chancellor of the Exchequer. 5
- (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”. 10
- (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 England or Wales under Part 1 of this Act or any other enactment— 15
- (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”. 20
- (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. 25
- “Prescribed” means prescribed by rules.

Registration of adoptions in Scotland, Northern Ireland, 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 the British Islands outside England and Wales that an order has been made in that part authorising the adoption of a child. 30
- (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— 35
- (a) the word “Adopted”, followed by
- (b) the name, in brackets, of the part 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 part 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 he has 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 he must make the entry accordingly.
- (2) If he is also satisfied that an entry in the registers of live-births or other records relates to the child, he 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 –
- (a) “prescribed” means prescribed by regulations made by the Registrar General with the approval of the Chancellor of the Exchequer,
 - (b) “overseas register of births” includes –
 - (i) a register made under regulations made by the Secretary of State under section 41(1)(g), (h) or (i) of the British Nationality Act 1981,
 - (ii) a record kept under an Order in Council made under section 1 of the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (other than a certified copy kept by the Registrar General).

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.
- “Prescribed” means prescribed by rules.
- (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 75(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,
he may secure that such alterations are made in those registers or other records as he considers are required in consequence of the adoption ceasing to have effect or to correct the error. 5
- “Overseas register of births” has the same meaning as in paragraph 3.
- (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. 10

Marking of entries on re-registration of birth on legitimation

- 5 (1) Without prejudice to paragraphs 2(4) and 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 section 14 of the Births and Deaths Registration Act 1953 (re-registration of births of legitimated persons), the entry made on the re-registration must be marked in the like manner. 15
- (2) Without prejudice to paragraph 4(9), where an entry in the registers of live-births or other records is marked in pursuance of paragraph 3 and the birth in question is subsequently re-registered under section 14 of that Act, the entry made on re-registration must be marked in the like manner. 20

Cancellations in registers on legitimation

- 6 (1) This paragraph applies where an adoption order is revoked under section 52(1) or paragraph 7 of Schedule 4. 25
- (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 30
- (b) the marking with the word “Adopted” of any entry relating to the adopted person in the registers of live-births or other records.
- “Prescribed” means prescribed by rules.
- (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. 35

SCHEDULE 2

Section 76(4)

DISCLOSURE OF BIRTH RECORDS BY REGISTRAR GENERAL

- 1 On an application made in the prescribed manner by an adopted person— 40
- (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 his birth.
- “Prescribed” means prescribed by regulations made by the Registrar General with the approval of the Chancellor of the Exchequer.
- 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 – 5
- (a) from a registered adoption society or an adoption society which is approved under section 3 of the Adoption (Scotland) Act 1978 or registered under Article 4 of the Adoption (Northern Ireland) Order 1987, 10
 - (b) if the applicant is in England and Wales, at the General Register Office or from any local authority or registered adoption support agency,
 - (c) if the applicant is in Scotland, from any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, 15
 - (d) if the applicant is in Northern Ireland, from any Board.
- (2) In sub-paragraph (1)(b), “registered adoption support agency” means an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000. 20
- (3) In sub-paragraph (1)(d), “Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972; but where the functions of a Board are exercisable by a Health and Social Services Trust, references in that sub-paragraph to a Board are to be read as references to the Health and Social Services Trust. 25
- (4) 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 1.
- 3 (1) Where an adopted person who is in England and Wales – 30
- (a) applies for information under paragraph 1 or Article 54 of the Adoption (Northern Ireland) Order 1987, or
 - (b) is supplied with information under section 45 of the Adoption (Scotland) Act 1978,
- the persons and bodies mentioned in sub-paragraph (2) must, if asked by the applicant to do so, provide counselling for the applicant. 35
- (2) Those persons and bodies are –
- (a) the Registrar General,
 - (b) any local authority,
 - (c) a registered adoption society or an adoption society which is approved under section 3 of the Adoption (Scotland) Act 1978 or registered under Article 4 of the Adoption (Northern Ireland) Order 1987. 40
- 4 (1) Where a person – 45
- (a) was adopted before 12th November 1975, and
 - (b) applies for information under paragraph 1,
- 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 – 5
- (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.

SCHEDULE 3

Section 124. 10

MINOR AND CONSEQUENTIAL AMENDMENTS

The Marriage Act 1949 (c. 76)

- 1 Section 3 of the Marriage Act 1949 (marriage of person aged under eighteen) is amended as follows.
- 2 In subsection (1A) – 15
- (a) in paragraph (a), for “(d)” there is substituted “(g)” and, in sub-paragraph (ii), after “guardian” there is inserted “or special guardian”,
 - (b) in paragraph (b), after “residence order” there is inserted “or a special guardianship order”, 20
 - (c) after paragraph (b) there is inserted –
 - “(bb) where a residence order and a special guardianship order are in force at the same time with respect to the child, the consent of the person or persons with whom he lives, or is to live, as a result of the residence order (in substitution for the consents mentioned in paragraph (a) of this subsection);”, 25
 - (d) in paragraph (d), for “neither paragraph (b) nor (c)” there is substituted “none of paragraphs (b), (bb), (c) or (e) to (g)”.
- 3 After paragraph (d) of that subsection there is inserted – 30
- “(e) where a child is placed for adoption by an adoption agency under section 18 of the Adoption and Children Act 2001, the consent of the prospective adopters (in substitution for the consents mentioned in paragraph (a) of this subsection);
 - (f) where a child is subject to a placement order but is not yet placed for adoption by an adoption agency, the consent of the appropriate local authority (in addition to the consents mentioned in paragraph (a) of this subsection); 35
 - (g) where the child is subject to a placement order and has been placed for adoption by an adoption agency, the consent of the appropriate local authority and the prospective adopters (in substitution for the consents mentioned in paragraph (a) of this subsection).” 40
- 4 For subsection (1B) there is substituted –

- “(1B) In this section—
- “guardian of a child”, “parental responsibility”, “residence order”, “special guardian”, “special guardianship order” and “care order” have the same meaning as in the Children Act 1989; 5
 - “adoption agency”, “placed for adoption by an adoption agency”, “placement order” and “local authority” have the same meaning as in the Adoption and Children Act 2001;
 - “appropriate local authority” means the local authority authorised by the placement order to place the child for adoption or, where no local authority is so authorised, the local authority within whose area the child is resident.” 10
- 5 In subsection (2), for “The last foregoing subsection” there is substituted “Subsection (1)”.
- The Births and Deaths Registration Act 1953 (c. 20)* 15
- 6 In section 10 of the Births and Deaths Registration Act 1953 (registration of father where parents not married)—
- (a) in subsection (1)(d)(i), for “a parental responsibility agreement made between them in relation to the child” there is substituted “any agreement made between them under section 4(1)(b) of the Children Act 1989 in relation to the child”, 20
 - (b) in subsection (1)(d)(ii), for “the Children Act 1989” there is substituted “that Act”,
 - (c) in subsection (3), the words following “the Family Law Reform Act 1987” are omitted. 25
- 7 In section 10A of the Births and Deaths Registration Act 1953 (re-registration of father where parents not married)—
- (a) in subsection (1)(d)(i), for “a parental responsibility agreement made between them in relation to the child” there is substituted “any agreement made between them under section 4(1)(b) of the Children Act 1989 in relation to the child”, 30
 - (b) in subsection (1)(d)(ii), for “the Children Act 1989” there is substituted “that Act”.
- The Sexual Offences Act 1956 (c. 69)*
- 8 In section 28 of the Sexual Offences Act 1956 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under sixteen), in subsection (4), the “or” at the end of paragraph (a) is omitted, and after that paragraph there is inserted—
- “(aa) a special guardianship order under that Act is in force with respect to her and he is not her special guardian; or”. 40
- The Health Services and Public Health Act 1968 (c. 46)*
- 9 The Health Services and Public Health Act 1968 is amended as follows.
- 10 In section 64 (financial assistance by the Secretary of State to certain voluntary organisations), in subsection (3)(a)(xviii), for “the Adoption Act 1976” there is substituted “the Adoption and Children Act 2001”. 45

- 11 In section 65 (financial and other assistance by local authorities to certain voluntary organisations), in subsection (3)(b), for “the Adoption Act 1976” there is substituted “the Adoption and Children Act 2001”.

The Local Authority Social Services Act 1970 (c. 42)

- 12 The Local Authority Social Services Act 1970 is amended as follows. 5

- 13 In section 7D (default powers of Secretary of State as respects social services functions of local authorities), in subsection (1), after “the Children Act 1989” there is inserted “or the Adoption and Children Act 2001”.

- 14 In Schedule 1 (enactments conferring functions assigned to social services committee) – 10

- (a) the entry relating to the Adoption Act 1976 is omitted,
(b) in the entry relating to the Children Act 1989, after “Consent to application for residence order in respect of child in care” there is inserted “Functions relating to special guardianship orders”,

and at the end of the Schedule there is inserted – 15

“Adoption
and Children
Act 2001

Maintenance
of Adoption
Service;
functions of
local authority
as adoption
agency.”

20

The Immigration Act 1971 (c. 77)

- 15 In section 33(1) of the Immigration Act 1971 (interpretation) – 25
- (a) in the definition of “Convention adoption”, for “the Adoption Act 1976” there is substituted “the Adoption and Children Act 2001”,
- (b) in the definition of “legally adopted”, for “section 72(2) of the Adoption Act 1976” there is substituted “section 83 of the Adoption and Children Act 2001”.

The Legitimacy Act 1976 (c. 31) 30

- 16 The Legitimacy Act 1976 is amended as follows.

- 17 In section 4 (legitimation of adopted child) –

- (a) in subsection (1), for “Section 39 of the Adoption Act 1976” there is substituted “Section 64 of the Adoption and Children Act 2001”,

- (b) in subsection (2) – 35

- (i) in paragraph (a), for “subsection (2) of the said section 39” there is substituted “subsection (2)(b) of the said section 64”,

- (ii) in paragraph (b), for “section 39, 41 or 42 of the Adoption Act 1976” there is substituted “section 64, 65 or 66 of the Adoption and Children Act 2001”. 40

- 18 In section 6 (dispositions depending on date of birth), in subsection (2), for “section 42(2) of the Adoption Act 1976” there is substituted “section 66(2) of the Adoption and Children Act 2001”.

The National Health Service Act 1977 (c. 49)

- 19 In section 124A(3) of the National Health Service Act 1977 (information provided by the Registrar General to the Secretary of State), the “or” at the end of paragraph (a) is omitted and after that paragraph there is inserted –
 “(aa) entered in the Adopted Children Register maintained by the Registrar General under the Adoption and Children Act 2001; or”.

The Adoption (Scotland) Act 1978 (c.28)

- 20 The Adoption (Scotland) Act 1978 is amended as follows.
- 21 In section 29 (return of children taken away in breach of section 27 or 28) –
 (a) in subsection (1), for “section 27 or 28 of the Adoption Act 1976” there is substituted “section 29, 33, 34 or 35 of the Adoption and Children Act 2001”, and
 (b) in subsection (2), for “section 27 or 28 of the Adoption Act 1976”, in both places where those words occur, there is substituted “section 29, 33, 34 or 35 of the Adoption and Children Act 2001”.
- 22 In section 45 (Adopted Children Register) –
 (a) in subsection (6)(d), for sub-paragraph (ii) there is substituted –
 “(ii) registered under Part II of the Care Standards Act 2000;”;
 (b) in subsection (6A)(b), for sub-paragraph (i) there is substituted –
 “(i) Schedule 2 to the Adoption and Children Act 2001;”.
- 23 In section 47 (annulment etc. of overseas adoptions), in subsection (4), for “section 53 of the Adoption Act 1976” there is substituted “section 82 of the Adoption and Children Act 2001”.
- 24 In section 50 (restriction on removal of children for adoption outside Great Britain), in subsection (1), for “section 55 of the Adoption Act 1976” there is substituted “section 81 of the Adoption and Children Act 2001”.
- 25 In section 54 (evidence of adoption in England, Wales and Northern Ireland), in paragraph (a), for “section 50(2) of the Adoption Act 1976” there is substituted “section 74(3) and (4) of the Adoption and Children Act 2001”.
- 26 In section 65 (interpretation), in subsection (1) –
 (a) in the definition of “adoption agency”, for “section 1 of the Adoption Act 1976” there is substituted “section 2(1) of the Adoption and Children Act 2001”,
 (b) in the definition of “adoption order” –
 (i) in paragraph (b), for “section 12 of the Adoption Act 1976” there is substituted “section 44 of the Adoption and Children Act 2001”,

- (ii) in paragraph (c), for “section 55 of the Adoption Act 1976” there is substituted “section 81 of the Adoption and Children Act 2001”,
- (c) in the definition of “approved adoption society”, for “an adoption society approved under Part 1 of the Adoption Act 1976” there is substituted “a registered adoption society (as defined in section 2(2) of the Adoption and Children Act 2001)”. 5

The Magistrates’ Courts Act 1980 (c. 43)

- 27 The Magistrates’ Courts Act 1980 is amended as follows.
- 28 In section 65 (meaning of family proceedings), in subsection (1), for paragraph (h) there is substituted – 10
“(h) the Adoption and Children Act 2001;”.
- 29 In section 69 (sitting of magistrates’ courts for family proceedings), in subsections (2) and (3), for “the Adoption Act 1976” there is substituted “the Adoption and Children Act 2001”. 15
- 30 In section 71 (newspaper reports of family proceedings), in subsections (1) and (2), for “the Adoption Act 1976” there is substituted “the Adoption and Children Act 2001”.
- 31 In Part 1 of Schedule 6 (fees to be taken by justices’ chief executives), in the entry relating to family proceedings – 20
- (a) for “the Adoption Act 1976, except under section 21 of that Act”, there is substituted “the Adoption and Children Act 2001, except under section 22 of that Act”,
 - (b) in paragraph (c), for “section 21 of the Adoption Act 1976” there is substituted “section 22 of the Adoption and Children Act 2001”. 25

The British Nationality Act 1981 (c. 61)

- 32 In section 1 of the British Nationality Act 1981 (acquisition of British citizenship by birth or adoption), in subsection (8), for “the Adoption Act 1976” there is substituted “the Adoption and Children Act 2001”.

The Insurance Companies Act 1982 (c. 50) 30

- 33 In section 31 of the Insurance Companies Act 1982 (restrictions on transactions with connected persons), in subsection (7), in the definitions of “son” and “daughter”, for “section 39(6) of the Adoption Act 1976” there is substituted “section 64(5) of the Adoption and Children Act 2001”.

The Mental Health Act 1983 (c. 20) 35

- 34 In section 28 of the Mental Health Act 1983 (nearest relative of minor under guardianship, etc.), in subsection (3), after ““guardian”” there is inserted “includes a special guardian (within the meaning of the Children Act 1989), but”.

The Child Abduction Act 1984 (c. 37)

- 35 (1) Section 1 of the Child Abduction Act 1984 (offence of abduction of child by parent, etc.) is amended as follows.
- (2) In subsection (2), after paragraph (c) there is inserted –
“*(ca)* he is a special guardian of the child; or” 5
- (3) In subsection (3)(a), after sub-paragraph (iii) there is inserted –
“*(iii)(a)* any special guardian of the child;”
- (4) In subsection (4), for paragraphs (a) and (b) there is substituted –
“*(a)* he is a person in whose favour there is a residence order in force with respect to the child, and he takes or sends the child out of the United Kingdom for a period of less than one month; or 10
(b) he is a special guardian of the child and he takes or sends the child out of the United Kingdom for a period of less than three months.” 15
- (5) In subsection (5A), the “or” at the end of sub-paragraph (i) of paragraph (a) is omitted, and after that sub-paragraph there is inserted –
“*(i)(a)* who is a special guardian of the child; or”
- (6) In subsection (7)(a), after “guardian of a child,” there is inserted “special guardian,” 20
- 36 (1) The Schedule to that Act (modifications of section 1 for children in certain cases) is amended as follows.
- (2) In paragraph 3 (adoption and custodianship), for sub-paragraphs (1) and (2) there is substituted –
- “*(1)* This paragraph applies where – 25
(a) a child is placed for adoption by an adoption agency under section 18 of the Adoption and Children Act 2001, or an adoption agency is authorised to place the child for adoption under that section; or
(b) a placement order is in force in respect of the child; or 30
(c) an application for such an order has been made in respect of the child and has not been disposed of; or
(d) an application for an adoption order has been made in respect of the child and has not been disposed of; or
(e) an order under section 81 of the Adoption and Children Act 2001 (giving parental responsibility prior to adoption abroad) has been made in respect of the child, or an application for such an order in respect of him has been made and has not been disposed of. 35
- (2)* Where this paragraph applies, section 1 of this Act shall have effect as if – 40
(a) the reference in subsection (1) to the appropriate consent were –
(i) in a case within sub-paragraph (1)(a) above, a reference to the consent of each person who has parental responsibility for the child or to the leave of the High Court; 45

- (ii) in a case within sub-paragraph (1)(b) above, a reference to the leave of the court which made the placement order;
- (iii) in a case within sub-paragraph (1)(c) or (d) above, a reference to the leave of the court to which the application was made; 5
- (iv) in a case within sub-paragraph (1)(e) above, a reference to the leave of the court which made the order or, as the case may be, to which the application was made; 10
- (b) subsection (3) were omitted;
- (c) in subsection (4), in paragraph (a), for the words from “in whose favour” to the first mention of “child” there were substituted “who provides the child’s home in a case falling within sub-paragraph (1)(a) or (b) of paragraph 3 of the Schedule to this Act”; and 15
- (d) subsections (4A), (5), (5A) and (6) were omitted.”
- (3) In paragraph 5 (interpretation), in sub-paragraph (a), for the words from “and “adoption order”” to the end there is substituted “, “adoption order”, “placed for adoption by an adoption agency” and “placement order” have the same meaning as in the Adoption and Children Act 2001; and”. 20

The Matrimonial and Family Proceedings Act 1984 (c. 42)

- 37 In section 40 of the Matrimonial and Family Proceedings Act 1984 (family proceedings rules), in subsection (2), in paragraph (a), after “the Adoption Act 1968” the “or” is omitted and after “the Adoption Act 1976” there is inserted “or section 126(1) of the Adoption and Children Act 2001”. 25

The Child Abduction and Custody Act 1985 (c. 60)

- 38 In Schedule 3 to the Child Abduction and Custody Act 1985 (custody orders), in paragraph 1, the “and” at the end of paragraph (b) is omitted and after that paragraph there is inserted – 30
- “(bb) a special guardianship order (within the meaning of the Act of 1989); and”,
- and paragraph (c)(v) is omitted.

The Family Law Act 1986 (c. 55)

- 39 The Family Law Act 1986 is amended as follows. 35
- 40 In section 1 (orders to which Part 1 applies), in subsection (1), after paragraph (a) there is inserted –
- “(aa) a special guardianship order made by a court in England and Wales under the Children Act 1989;”
- 41 In section 2 (jurisdiction: general), after subsection (2) there is inserted – 40
- “(2A) A court in England and Wales shall not have jurisdiction to make a special guardianship order under the Children Act 1989 unless the condition in section 3 of this Act is satisfied.”

- 42 In section 57 (declarations as to adoptions effected overseas) –
- (a) in subsection (1)(a), for the words from “subsection (1)” to the end there is substituted “section 63 of the Adoption and Children Act 2001 or an overseas adoption as defined by section 83 of that Act, or”,
 - (b) in subsection (2)(a), for “section 39 of the Adoption Act 1976” there is substituted “section 64 of the Adoption and Children Act 2001”. 5

The Family Law Reform Act 1987 (c. 42)

- 43 The Family Law Reform Act 1987 is amended as follows.
- 44 In section 1 (general principle), in subsection (3)(c), for “Part IV of the Adoption Act 1976” there is substituted “Chapter 4 of Part 1 of the Adoption and Children Act 2001”. 10
- 45 In section 19 (dispositions of property), in subsection (5), for the words from “section 42” to the end there is substituted “section 66 of the Adoption and Children Act 2001 (rules of interpretation for instruments concerning property).”. 15

The Children Act 1989 (c. 41)

- 46 The Children Act 1989 is amended as follows.
- 47 In section 8 (residence, contact and other orders with respect to children), in subsection (4), for paragraph (d) there is substituted –
- “(d) the Adoption and Children Act 2001;”. 20
- 48 In section 10 (power of court to make section 8 orders) –
- (a) in subsection (4)(a), for “or guardian” there is substituted “, guardian or special guardian”,
 - (b) after subsection (7) there is inserted –
- “(7A) If a special guardianship order is in force with respect to a child, an application for a residence order may only be made with respect to him, if apart from this subsection the leave of the court is not required, with such leave.” 25
- 49 In section 12 (residence orders and parental responsibility), in subsection (3) –
- (a) paragraph (a) is omitted,
 - (b) in paragraph (b), for “section 55 of the Act of 1976” there is substituted “section 81 of the Adoption and Children Act 2001”. 30
- 50 In section 16 (family assistance orders), in subsection (2)(a), for “or guardian” there is substituted “, guardian or special guardian”. 35
- 51 In section 20 (provision of accommodation for children: general), in subsection (9), the “or” at the end of paragraph (a) is omitted and after that paragraph there is inserted –
- “(aa) who is a special guardian of the child; or”. 40
- 52 In section 24 (persons qualifying for advice and assistance) –
- (a) for subsection (1) there is substituted –

- “(1) In this Part “a person qualifying for advice and assistance” means a person to whom subsection (1A) or (1B) applies.
- (1A) This subsection applies to a person –
- (a) who has reached the age of sixteen but not the age of twenty-one; 5
 - (b) with respect to whom a special guardianship order is in force (or, if he has reached the age of eighteen, was in force when he reached that age); and
 - (c) who was, immediately before the making of that order, looked after by a local authority. 10
- (1B) This subsection applies to a person to whom subsection (1A) does not apply, and who –
- (a) is under twenty-one; and
 - (b) at any time after reaching the age of sixteen but while still a child was, but is no longer, looked after, accommodated or fostered.”, 15
- (b) in subsection (2), for “subsection (1)(b)” there is substituted “subsection (1B)(b)”,
- (c) in subsection (5), before paragraph (a) there is inserted –
- “(za) in the case of a person to whom subsection (1A) applies, a local authority determined in accordance with regulations made by the Secretary of State;” 20
- 53 In section 24A (advice and assistance for qualifying persons) –
- (a) in subsection (2)(b), after “a person” there is inserted “to whom section 24(1A) applies, or to whom section 24(1B) applies and”, 25
 - (b) in subsection (3)(a), after “if” there is inserted “he is a person to whom section 24(1A) applies, or he is a person to whom section 24(1B) applies and”.
- 54 In section 24B (assistance with employment, education and training), in each of subsections (1) and (3)(b), after “of” there is inserted “section 24(1A) or”. 30
- 55 In section 33 (effect of care order), in subsection (3)(b) and in each of subsections (5) and (9), for “or guardian” there is substituted “, guardian or special guardian”; and, in subsection (6)(b) –
- (a) sub-paragraph (i) is omitted,
 - (b) in sub-paragraph (ii), for “section 55 of the Act of 1976” there is substituted “section 81 of the Adoption and Children Act 2001”. 35
- 56 In section 34 (parental contact etc. with children in care), in subsection (1)(b), after “guardian” there is inserted “or special guardian”.
- 57 In section 80 (inspection of children’s homes by persons authorised by Secretary of State), in subsection (1), paragraphs (e) and (f) are omitted. 40
- 58 In section 81 (inquiries), in subsection (1), paragraph (b) is omitted.
- 59 In section 88 (amendments of adoption legislation), subsection (1) is omitted.
- 60 In section 91 (effect and duration of orders, etc.) –
- (a) after subsection (5) there is inserted –

- “(5A) The making of a special guardianship order with respect to a child who is the subject of—
- (a) a care order;
 - (b) a section 8 order; or
 - (c) an order under section 34,
- discharges that order.”, 5
- (b) in subsection (7), after “4(1)” there is inserted “4A(1)”,
- (c) in subsection (8)(a), after “4” there is inserted “or 4A”.
- 61 In section 102 (power of constable to assist in exercise of certain powers to search for children or inspect premises), in subsection (6), paragraph (c) is omitted. 10
- 62 In section 105 (interpretation), in subsection (1) —
- (a) in the definition of “adoption agency”, for “section 1 of the Adoption Act 1976” there is substituted “section 2 of the Adoption and Children Act 2001”, 15
 - (b) at the appropriate place there is inserted —
“care plan” has the meaning given by section 31A(1);”,
 - (c) in the definition of “parental responsibility agreement”, for “section 4(1)” there is substituted “sections 4(1) and 4A(2)”,
 - (d) the definition of “protected child” is omitted, 20
 - (e) after the definition of “special educational needs” there is inserted —
“special guardian” and “special guardianship order” have the meaning given by section 14A;”.
- 63 In Schedule 1 (financial provision for children) —
- (a) in paragraph 1 (orders for financial relief against parents) — 25
 - (i) in sub-paragraph (1), for “or guardian” there is substituted “, guardian or special guardian”, and
 - (ii) in sub-paragraph (6), after “order” there is inserted “or a special guardianship order”,
 - (b) in paragraph 6 (variation etc of orders for periodical payments), in sub-paragraph (8), after “guardian” there is inserted “or special guardian”, 30
 - (c) in paragraph 8 (financial relief under other enactments), in sub-paragraph (1) and in sub-paragraph (2)(b), after “residence order” there is inserted “or a special guardianship order”, 35
 - (d) in paragraph 14 (financial provision for child resident in country outside England and Wales), in sub-paragraph (1)(b), after “guardian” there is inserted “or special guardian”.
- 64 In Schedule 2, in paragraph 19 (arrangements by local authorities to assist children to live abroad) — 40
- (a) in sub-paragraph (4) (arrangements to assist children to live abroad), after “guardian,” there is inserted “special guardian,”,
 - (b) in sub-paragraph (6), for the words from the beginning to “British subject)” there is substituted “Section 82 of the Adoption and Children Act 2001 (which imposes restrictions on taking children out of the United Kingdom)”. 45

65	In Schedule 8 (privately fostered children), in paragraph 5, for subparagraphs (a) and (b) there is substituted “he is placed in the care of a person who proposes to adopt him under arrangements made by an adoption agency within the meaning of— (a) section 2 of the Adoption and Children Act 2001; (b) section 1 of the Adoption (Scotland) Act 1978; or (c) Article 3 of the Adoption (Northern Ireland) Order 1987”.	5
66	Part 1 of Schedule 10 is omitted.	
67	In Schedule 11 (jurisdiction), in paragraphs 1 and 2, for the words “the Adoption Act 1976”, wherever they occur, there is substituted “the Adoption and Children Act 2001”.	10
<i>The Human Fertilisation and Embryology Act 1990 (c. 37)</i>		
68	The Human Fertilisation and Embryology Act 1990 is amended as follows.	
69	In section 27 (meaning of mother), at the end of subsection (2) there is added “or the adopter and the person to whom the adopter is married”.	15
70	In section 28 (meaning of father), at the end of subsection (5)(c) there is added “or the adopter and the person to whom the adopter is married”.	
71	In section 30 (parental orders in favour of gamete donors), in subsection (10) for “Adoption Act 1976” there is substituted “Adoption and Children Act 2001”.	20
<i>The Courts and Legal Services Act 1990 (c. 41)</i>		
72	In section 58A of the Courts and Legal Services Act 1990 (conditional fee agreements: supplementary), in subsection (2), for paragraph (b) there is substituted— “(b) the Adoption and Children Act 2001;”.	25
<i>The Child Support Act 1991 (c. 48)</i>		
73	In section 26 of the Child Support Act 1991 (disputes about parentage), in subsection (3), for “Part IV of the Adoption Act 1976” there is substituted “Chapter 4 of Part 1 of the Adoption and Children Act 2001”.	
<i>The Children (Scotland) Act 1995 (c. 36)</i>		
74	Section 86 of the Children (Scotland) Act 1995 (parental responsibilities order: general) is amended as follows.	
75	In subsection (3), in paragraph (a), for “section 18 (freeing for adoption) or 55 (adoption abroad) of the Adoption Act 1976” there is substituted “section 18 (placing children with parental consent) or 81 (giving parental responsibility prior to adoption abroad) of the Adoption and Children Act 2001”.	35
76	In subsection (6), in paragraph (b), for the words from the beginning to “Adoption Act 1976” there is substituted— “(b) he becomes the subject of an adoption order within the meaning of the Adoption (Scotland) Act 1978;	40

- (bb) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2001, is authorised to place him for adoption under section 18 of that Act (placing children with parental consent) or he becomes the subject of an order under section 20 of that Act (placement orders) or under section 81 of that Act (giving parental responsibility prior to adoption abroad). 5

The Family Law Act 1996 (c. 27)

- 77 The Family Law Act 1996 is amended as follows.
- 78 In section 62 (meaning of “relevant child” etc.) – 10
- (a) in subsection (2), in paragraph (b), after “the Adoption Act 1976” there is inserted “, the Adoption and Children Act 2001”,
 - (b) in subsection (5), for the words from “has been freed” to “1976” there is substituted “falls within subsection (7)”.
- 79 At the end of that section there is inserted – 15
- “(7) A child falls within this subsection if –
- (a) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2001, has power to place him for adoption under section 18 of that Act (placing children with parental consent) or he has become the subject of an order under section 20 of that Act (placement orders), or 20
 - (b) he is freed for adoption by virtue of an order made –
 - (i) in England and Wales, under section 18 of the Adoption Act 1976,
 - (ii) in Scotland, under section 18 of the Adoption (Scotland) Act 1978, or 25
 - (iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987.”
- 80 In section 63 (interpretation of Part 4) –
- (a) in subsection (1), for the definition of “adoption order”, there is substituted – 30
 - ““adoption order” means an adoption order within the meaning of section 72(1) of the Adoption Act 1976 or section 44(1) of the Adoption and Children Act 2001;”,
 - (b) in subsection (2), after paragraph (h) there is inserted – 35
 - “(i) the Adoption and Children Act 2001.”

The Housing Act 1996 (c. 52)

- 81 Section 178 of the Housing Act 1996 (meaning of associated person) is amended as follows.
- 82 In subsection (2), for the words from “has been freed” to “1976” there is substituted “falls within subsection (2A)”. 40
- 83 After that subsection there is inserted –
- “(2A) A child falls within this subsection if –

	(a) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2001, is authorised to place him for adoption under section 18 of that Act (placing children with parental consent) or he has become the subject of an order under section 20 of that Act (placement orders), or	5
	(b) he is freed for adoption by virtue of an order made –	
	(i) in England and Wales, under section 18 of the Adoption Act 1976,	
	(ii) in Scotland, under section 18 of the Adoption (Scotland) Act 1978, or	10
	(iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987.”	
84	In subsection (3), for the definition of “adoption order”, there is substituted –	
	““adoption order” means an adoption order within the meaning of section 72(1) of the Adoption Act 1976 or section 44(1) of the Adoption and Children Act 2001;”.	15
<i>The Police Act 1997 (c. 50)</i>		
85	In section 115 of the Police Act 1997 (enhanced criminal records), in subsection (5)(h), for “section 11 of the Adoption Act 1976” there is substituted “section 2 of the Adoption and Children Act 2001”.	20
<i>The Protection of Children Act 1999 (c.14)</i>		
86	In section 2B (individuals named in the findings of certain inquiries), in subsection (7), after paragraph (a) there is inserted –	
	“(vi) section 16 of the Adoption and Children Act 2001;”.	25
<i>The Adoption (Intercountry Aspects) Act 1999 (c. 18)</i>		
87	The following provisions of the Adoption (Intercountry Aspects) Act 1999 cease to have effect in relation to England and Wales: sections 3, 6, 8, 9, 11 to 14 and 17.	
88	Section 2 of that Act (accredited bodies) is amended as follows.	30
89	In subsection (2A) –	
	(a) for the words from the beginning to “2000” there is substituted “A registered adoption society”,	
	(b) for “agency” there is substituted “society”.	
90	For subsection (5) there is substituted –	35
	“(5) In this section, “registered adoption society” has the same meaning as in section 2 of the Adoption and Children Act 2001 (basic definitions); and expressions used in this section in its application to England and Wales which are also used in that Act have the same meanings as in that Act.”	40
91	In subsection (6) –	
	(a) the words “in its application to Scotland” are omitted,	

- (b) after “expressions” there is inserted “used in this section in its application to Scotland”.
- 92 Section 4 (effect of Convention adoptions in England and Wales) is omitted.
- 93 In section 16(1) (devolution: Wales), the words “, or section 17 or 56A of the 1976 Act,” are omitted. 5

The Access to Justice Act 1999 (c. 22)

- 94 In Schedule 2 to the Access to Justice Act 1999 (Community Legal Service: excluded services), in paragraph 2(3)(c) –
- (a) for “section 27 or 28 of the Adoption Act 1976” there is substituted “section 35 of the Adoption and Children Act 2001”, 10
- (b) for “an order under Part II or section 29 or 55” there is substituted “a placement order or adoption order (within the meaning of the Adoption and Children Act 2001) or an order under section 40 or 81”.

The Care Standards Act 2000 (c. 14)

- 95 The Care Standards Act 2000 is amended as follows. 15
- 96 In section 4 (basic definitions), in subsection (7), for “the Adoption Act 1976” there is substituted “the Adoption and Children Act 2001”.
- 97 In section 14 (2) (offences conviction of which may result in cancellation of registration), for paragraph (d) there is substituted –
- “(d) an offence under regulations under section 1(3) of the Adoption (Intercountry Aspects) Act 1999 or section 9 or 56 of the Adoption and Children Act 2001 or an offence under section 89, 90 or 91 of that Act”. 20
- 98 In section 16(2) (power to make regulations providing that no application for registration may be made in respect of certain agencies which are unincorporated bodies), “or a voluntary adoption agency” is omitted. 25
- 99 In section 22(10) (disapplication of power to make regulations in the case of voluntary adoption agencies), at the end there is inserted “or adoption support agencies”.
- 100 In section 31 (inspections by authorised persons), in subsection (3)(b), for “section 9(2) of the Adoption Act 1976” there is substituted “section 9 of the Adoption and Children Act 2001”. 30
- 101 In section 43 (introductory), in subsection (3)(a) –
- (a) for “the Adoption Act 1976” there is substituted “the Adoption and Children Act 2001”, 35
- (b) after “children” there is inserted “or the provision of adoption support services (as defined in section 2(6) of the Adoption and Children Act 2001)”.
- 102 In section 46 (inspections: supplementary), in subsection (7)(c), for “section 9(3) of the Adoption Act 1976” there is substituted “section 9 of the Adoption and Children Act 2001”. 40

103	In section 55(2)(b) (definition of “social care worker”), for “or a voluntary adoption agency” there is substituted “, a voluntary adoption agency or an adoption support agency”.	
104	In section 121 (general interpretation) – (a) in subsection (1), in the definition of “voluntary organisation”, for “the Adoption Act 1976” there is substituted “the Adoption and Children Act 2001”, (b) in subsection (13), in the appropriate place in the table there is inserted “Adoption support agency ... Section 4”.	5
105	In Schedule 4 (minor and consequential amendments), paragraph 27(b) is omitted.	10

SCHEDULE 4

Section 124.

TRANSITIONAL PROVISIONS AND SAVINGS

General rules for continuity

1	(1) Any reference (express or implied) in Part 1 or any other enactment, instrument or document to – (a) any provision of Part 1, or (b) things done or falling to be done under or for the purposes of any provision of Part 1, must, so far as the nature of the reference permits, be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision repealed by this Act had effect, a reference to that corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision.	15 20
	(2) Any reference (express or implied) in any enactment, instrument or document to – (a) a provision repealed by this Act, or (b) things done or falling to be done under or for the purposes of such a provision, must, so far as the nature of the reference permits, be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision of Part 1 has effect, a reference to that corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision.	25 30

General rule for old savings 35

2	(1) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings. (2) The repeal by this Act of a saving made on the previous repeal of an enactment does not affect the operation of the saving in so far as it is not specifically reproduced in this Act but remains capable of having effect.	35 40
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Pending applications for freeing orders

- 3 Nothing in this Act affects any application for an order under section 18 of the Adoption Act 1976 (freeing for adoption) where –
- (a) the application has been made and has not been disposed of immediately before the repeal of that section, and 5
 - (b) the child in relation to whom the application is made has his home immediately before that repeal with a person with whom he has been placed for adoption by an adoption agency.

Freeing orders

- 4 (1) Nothing in this Act affects any order made under section 18 of the Adoption Act 1976 and – 10
- (a) sections 20 and 21 of that Act are to continue to have effect in relation to such an order, and
 - (b) Part 1 of Schedule 6 to the Magistrates’ Courts Act 1980 is to continue to have effect for the purposes of an application under section 21 of the Adoption Act 1976 in relation to such an order. 15
- (2) Section 20 of that Act, as it has effect by virtue of this paragraph, is to apply as if, in subsection (3)(c) after “1989” there were inserted –
“(iia) any care order, within the meaning of that Act”.
- (3) Where a child is free for adoption by virtue of an order made under section 18 of that Act, the third condition in section 45(6) is to be treated as satisfied. 20

Pending applications for adoption orders

- 5 Nothing in this Act affects any application for an adoption order under section 12 of the Adoption Act 1976 where –
- (a) the application has been made and has not been disposed of immediately before the repeal of that section, and 25
 - (b) the child in relation to whom the application is made has his home immediately before that repeal with a person with whom he has been placed for adoption by an adoption agency.

Notification of adoption applications 30

- 6 Where a notice given in respect of a child by the prospective adopters under section 22(1) of the Adoption Act 1976 is treated by virtue of paragraph 1(1) as having been given for the purposes of section 43(2) in respect of an application to adopt the child, section 41(3) has effect in relation to their application for an adoption order as if for “six months” there were substituted “twelve months”. 35

Legitimated persons

- 7 Where any person legitimated by virtue of section 1 of the Legitimacy Act 1959 had been adopted by his natural parents before the commencement of that Act, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke that order. 40

Status

- 8 In section 63(1)(a) references to an adoption order include adoption by an order made under the Adoption Act 1976, the Children Act 1975, the Adoption Act 1958, the Adoption Act 1950 or any enactment repealed by the Adoption Act 1950. 5
- 9 (1) Section 64 –
- (a) does not apply to a pre-1976 instrument or enactment 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 pre-1976 instrument or enactment. 10
- (2) Section 70 applies in relation to this paragraph as if this paragraph were contained in Chapter 4 of Part 1; and an instrument or enactment is a pre-1976 instrument or enactment for the purposes of this Schedule if it was passed or made at any time before 1st January 1976.
- 10 Section 39 of the Adoption Act 1976 is to continue to apply as respects things done, or events occurring, before the day which is the appointed day for the purposes of Chapter 4 of Part 1. 15
- 11 Section 66 does not apply to a pre-1976 instrument.
- 12 In section 67(1), the reference to Part 3 of the Family Law Reform Act 1987 includes Part 2 of the Family Law Reform Act 1969. 20

The Child Abduction Act 1984

- 13 Paragraphs 37 to 39 of Schedule 3 do not affect the Schedule to the Child Abduction Act 1984 in its application to a child who is the subject of –
- (a) an order under section 18 of the Adoption Act 1976 freeing the child for adoption, 25
 - (b) a pending application for such an order, or
 - (c) a pending application for an order under section 12 of that Act.

The Courts and Legal Services Act 1990

- 14 Paragraph 75 of Schedule 3 does not affect section 58A(2)(b) of the Courts and Legal Services Act 1990 in its application to proceedings under the Adoption Act 1976. 30

The Children (Scotland) Act 1995

- 15 Paragraph 79 of Schedule 3 does not affect section 86(6) of the Children (Scotland) Act 1995 in its application to a child who becomes the subject of an order under section 18 or 55 of the Adoption Act 1976 by virtue of an application made before the repeal of that section. 35

SCHEDULE 5

Section 124

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Births and Deaths Registration Act 1953 (c. 20).	In section 10(3), the words following “the Family Law Reform Act 1987”.	5
Sexual Offences Act 1956 (c.69).	In section 28(4), the “or” at the end of paragraph (a).	
Local Authority Social Services Act 1970 (c. 42).	In Schedule 1, the entry relating to the Adoption Act 1976.	
Adoption Act 1976 (c. 36).	The whole Act.	10
Criminal Law Act 1977 (c. 45).	In Schedule 12, the entries relating to the Adoption Act 1976.	
National Health Service Act 1977 (c.49).	In section 124A(3), the “or” at the end of paragraph (a).	
Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22).	Sections 73(2), 74(2) and 74(4).	15
Magistrates’ Courts Act 1980 (c. 43).	In Schedule 7, paragraphs 141 and 142.	
British Nationality Act 1981 (c. 61).	In Schedule 7, the entries relating to the Adoption Act 1976.	20
Mental Health Act 1983 (c. 20).	In Schedule 4, paragraph 45.	
Health and Social Services and Social Security Adjudications Act 1983 (c. 41).	In Schedule 2, paragraphs 29 to 33, 35 and 36. In Schedule 9, paragraph 19.	25
County Courts Act 1984 (c. 28).	In Schedule 2, paragraph 58.	
Child Abduction Act 1984 (c.37).	In section 1(5A)(a), the “or” at the end of subparagraph (i).	
Matrimonial and Family Proceedings Act 1984 (c. 42).	In section 40(2)(a), after “the Adoption Act 1968”, the word “or”. In Schedule 1, paragraph 20.	30
Child Abduction and Custody Act 1985 (c. 60).	In Schedule 3, in paragraph 1, the “and” at the end of paragraph (b). In Schedule 3, in paragraph 1(c), paragraph (v).	
Family Law Reform Act 1987 (c. 42).	In Schedule 3, paragraphs 2 to 5.	35
Children Act 1989 (c. 41).	Section 9(4). Section 12(3)(a). In section 20(9), the “or” at the end of paragraph (a). Section 33(6)(b)(i). Section 80(1)(e) and (f). Section 81(1)(b). Section 88(1). Section 102(6)(c).	40
		45

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Children Act 1989 (c. 41). – <i>cont.</i>	In section 105(1), the definition of “protected child”.	
	In Schedule 10, Part 1.	
National Health Service and Community Care Act 1990 (c. 19).	In Schedule 9, paragraph 17.	5
Human Fertilisation and Embryology Act 1990 (c. 37).	In Schedule 4, paragraph 4.	
Courts and Legal Services Act 1990 (c. 41).	In Schedule 16, paragraph 7.	10
Local Government (Wales) Act 1994 (c. 19).	In Schedule 10, paragraph 9.	
Health Authorities Act 1995 (c. 17).	In Schedule 1, paragraph 101.	15
Adoption (Intercountry Aspects) Act 1999 (c. 18).	In section 2(6), the words “in its application to Scotland”.	
	Section 4.	
	In section 16(1), the words “, or section 17 or 56A of the 1976 Act,”.	20
	In Schedule 2, paragraph 3.	
Access to Justice Act 1999 (c. 22).	In Schedule 13, paragraph 88.	
Care Standards Act 2000 (c. 14).	In section 16(2), the words “or a voluntary adoption agency”.	25
	In Schedule 4, paragraphs 5 and 27(b).	
Local Government Act 2000 (c. 22).	In Schedule 5, paragraph 16.	
Criminal Justice and Court Services Act 2000 (c. 43).	In Schedule 7, paragraphs 51 to 53.	30

SCHEDULE 6

Section 132.

GLOSSARY

In this Act, the expressions listed in the left-hand column below have the meaning given by, or are to be interpreted in accordance with, the provisions of this Act or (where stated) of the 1989 Act listed in the right-hand column.

35

<i>Expression</i>	<i>Provision</i>
the 1989 Act	section 2(5)
Adopted Children Register	section 74
Adoption and Children Act Register	section 115

<i>Expression</i>	<i>Provision</i>	
adoption (in relation to Chapter 4 of Part 1)	section 63	
adoption agency	section 2(1)	
adoption agency placing a child for adoption	section 17(4)	
Adoption Contact Register	section 77	5
adoption order	section 44(1)	
Adoption Service	section 2(1)	
adoption society	section 2(5)	
adoption support agency	section 8	
adoption support services	section 2(6)	10
appointed day (in relation to Chapter 4 of Part 1)	section 63(2)	
appropriate Minister	section 129	
Assembly	section 129	
body	section 129	15
by virtue of	section 129	
care order	section 105(1) of the 1989 Act	
child	sections 47(5) and 129	
child assessment order	section 43(2) of the 1989 Act	20
child in the care of a local authority	section 105(1) of the 1989 Act	
child looked after by a local authority	section 22 of the 1989 Act	25
child placed for adoption by an adoption agency	section 17(4)	
child to be adopted, adopted child	section 47(5)	
consent (in relation to making adoption orders or placing for adoption)	section 50	30
the Convention	section 129	
Convention adoption	section 63(1)(c)	
Convention adoption order	section 129	

<i>Expression</i>	<i>Provision</i>	
Convention country	section 129	
court	section 129	
disposition (in relation to Chapter 4 of Part 1)	section 70	
guardian	section 129	5
information	section 129	
interim care order	section 38 of the 1989 Act	
local authority	section 129	
local authority foster parent	section 23(3) of the 1989 Act	10
Northern Irish adoption agency	section 129	
Northern Irish adoption order	section 129	
notice	section 129	
notice of intention to adopt	section 43(2)	15
overseas adoption	section 83	
parental responsibility	section 3 of the 1989 Act	
placement order	section 20	
placing, or placed, for adoption	sections 17(4) and 18(4)	20
prescribed	section 129	
registered adoption society	section 2(2)	
registers of live-births	section 79	
registration authority (in Part 1)	section 129	
regulations	section 129	25
relative	section 129, read with section 1(8)	
residence order	section 8(1) of the 1989 Act	
rules	section 129	30
Scottish adoption agency	section 129	
Scottish adoption order	section 129	
subordinate legislation	section 129	

<i>Expression</i>	<i>Provision</i>	
supervision order	section 31(11) of the 1989 Act	
unitary authority	section 129	
voluntary organisation	section 2(5)	5

Adoption and Children Bill

A

B I L L

To restate and amend the law relating to adoption; to make further amendments of the law relating to children; to amend section 93 of the Local Government Act 2000; and for connected purposes.

*Presented by Mr Secretary Milburn
supported by
The Prime Minister,
Mr Chancellor of the Exchequer,
Mr Secretary Blunkett, Mr Secretary Murphy,
Mrs Secretary Liddell, Jacqui Smith
and Ms Rosie Winterton*

*Ordered, by The House of Commons,
to be Printed, 19th October 2001.*

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