



A Quick Guide to the Adoption and Children Act (2002)

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Foreword

This quick guide is intended to be a brief introduction to the Adoption and Children Act 2002, following the commencement of the new court rules and application forms on 30 December 2005.

Further details of pre-court application requirements and procedures, including the statutory guidance may be obtained from the Department for Education and Skills website at:

<http://www.dfes.gov.uk/adoption/>

This version of the guide includes signposts and hyperlinks to the rules, application forms and information leaflets. The Family Procedure (Adoption) Rules may be found which also has links can be found at:

<http://www.dca.gov.uk/procedurerules.htm>

Please note that this information is a guide and not a statement of the law.

If you have any queries relating to the sections contained in this guidance please contact:

Kevin Rose
Children's Proceedings Branch
Family Justice Division
Her Majesty's Court Service
4.19 Selborne House
54-60 Victoria Street
SW1E 6QW

Tel No: 020 7210 2674

Email: kevin.rose@hmcourts-service.gsi.gov.uk

1. Principal Reforms of the Adoption and Children Act 2002

Please refer to the relevant paragraph of this document indicated in the third column of the below tables for further information about the new provisions.

1.1 Main provisions at a glance

Summary of New Provision	Act Ref:	Further info at paragraph(s):
Adoption law is aligned with the provisions of the Children Act 1989 by the insertion of the welfare checklist to ensure child's welfare is the paramount consideration.	Section 1	5
Provisions for the process of adoption and the conditions for making adoption orders, including new measures for placement for adoption and advance consent to adoption	Section 18 to 20	6-6.3
Placement orders replace freeing orders, the existing provisions of Adoption Act 1976.	Section 21	7-7.5
Single people and couples (including unmarried and same sex couples) are now eligible to apply for adoption orders.	Sections 49 50 & 51	8.4-8.6
Court may dispense with the consent of a birth parent to adoption on grounds that he/she (i) cannot be found or is incapable of giving consent or (ii) the child's welfare requires it.	Section 52	8.7
A more consistent approach for access to information to ensure that the release of sensitive information about adopted people and their birth families happens in a proper manner and takes account of their views wherever possible.	Sections 56-65	10 & 10.1
Incorporates many of the measures of the Adoption (Intercountry Aspects) Act 1999 in respect to England and Wales and extends those measures with new safeguards and penalties.	Chapter 6	12-12.2
Additional restrictions on bringing a child into the United Kingdom for adoption aimed at ensuring that British residents follow the correct procedures. (See above)	Sections 83 & 84	12.3
Restrictions on arranging adoptions and advertising children for adoption (through media and electronically) other than through adoption agencies, and prohibition of certain payments in connection with adoption.	Sections 92-97 & 123	13-13.4
Department for Education and Skills to lead in the establishment of an Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters.	Section 125	14

1.2. Children Act 1989 amendments at a glance

Summary of New Provision	Act Ref:	Further info at paragraph(s):
Children Act 2004 made changes to the law allowing parties and other specified people to disclose certain information from family proceedings involving children to other specified people without needing the specific permission of the court or being in contempt of court.	Section 62 of Children Act 2004	11
An unmarried father may acquire parental responsibility where the child is jointly registered with the mother.	Section 111	15
The court has power to extend residence orders until the child reaches the age of 18, if considered to be in his/her interests	Section 114	16
Introduction of Special Guardianship orders which provide permanence for children but are alternatives to adoption.	Section 115	17
Application of the procedure for making representations (comments/complaints) about services under the Children Act 1989 is widened. Local Authorities also now have a duty to arrange advocacy services for children making or intending to make representations.	Section 117 & 119	18
Establishment of Independent Reviewing Officers in local authorities to review the care plans of looked after children.	Section 118	19
Definition of harm amended to include impairment to the health or development of a child as a result of witnessing the ill-treatment of another person e.g. domestic violence.	Section 120	20
Applications for the making or revocation of placement orders have been added to the list of "specified proceedings" under section 41 of the Children Act 1989, thereby making the child a party.	Section 122	21

2. Background

2.1 Aims of the Adoption and Children Act 2002

The Adoption and Children Act 2002 ("the Act") replaces the Adoption Act 1976, updates the Children Act 1989 and modernises the whole existing legal framework for domestic and inter-country adoption. The Act enshrines in law the proposals of the Government White Paper "*Adoption, a new approach*" (December 2000). This paper sets out the intention of Government to reform adoption law in England and Wales, improve performance of the adoption service and promote greater use of adoption, putting the best interests of children at the centre of the adoption process.

In summary, the Act aims to ensure that:

- the needs of the child are put at the centre of the adoption process
- birth parents understand the impact of consenting to adoption
- disputes are resolved early so adoption does not become a *fait accompli*

- the voice of the child may be heard, directly or indirectly through reports to the court
- there is effective case management without delay to the decision-making process

2.2 How these aims will be achieved: the “overriding objective”

Proceedings under the Act are subject to the *overriding objective* set out in Rule 1 of the Family Procedure (Adoption) Rules 2005 of enabling the court to deal with cases justly, and is expressed to include that:

- parties are on an equal footing
- cases are dealt with in ways which are proportionate to the importance and complexity of issues
- cases are dealt with expeditiously and fairly
- cases are allotted an appropriate share of court resources

3. The paramount consideration

The Government believes that the interests and welfare of a child (throughout his/her life) should be the focus of the adoption since it has lifelong implications. For this purpose the Act makes the welfare of the child the paramount consideration for courts and adoption agencies in decision-making relating to adoption.

This “paramountcy principle” obliges the court and agency to make decisions such as whether to dispense with the consent of the birth parent if deemed incapable on grounds of i.e. mental illness. It also obliges the court or adoption agency to consider that in general any delay is likely to prejudice the child.

Section 1(4) of the Act provides a welfare checklist tailored to the particular circumstances of adoption that must be adhered to by the court and adoption agencies. In doing so, the Act aligns adoption legislation with the relevant provisions of the Children Act 1989.

Section 1(3) of the Act obliges the Court to consider that delay in decision-making is likely to prejudice the welfare of the child. This provision is further supported by section 109 which imposes a duty on the court to manage cases by drawing up a timetable and giving directions for the purpose of ensuring that the timetable is adhered to. Avoidance of delay is further ensured by the Family Procedure (Adoption) Rules 2005 which provide a procedural code for the operation of the Adoption and Children Act in all three tiers of court (High Court, County Court and the Magistrates’ Court) in England and Wales.

In taking any decision relating to the adoption of a child, the court or agency will have to consider the whole range of powers available to it under the Act and the Children Act 1989. The court may only make an order when it is convinced that action would be in the best interests of the child.

4. How the welfare of children is secured

Section 102 says that court rules must provide for the appointment in prescribed cases of an appropriate officer from the Children and Family Court Advisory and Support Service (CAFCASS) or a Welsh Family Proceedings Officer.

The Family Procedure (Adoption) Rules set out the circumstances in which such an officer must be appointed in the following cases:

- the making, varying or revocation of a placement order (section 21)
- the making, varying or revocation of a contact order (section 26 and 27)
- the making of an adoption order (section 46)
- the making of an order giving permission to change a child's surname or remove a child from the UK [section 28(2) and (3)]
- the making of a parental responsibility order (section 84) prior to adoption abroad
- the making of an order to annul a Convention adoption or Convention adoption order or provide for an overseas adoption or determination to cease to be valid (section 89)

The CAFCASS officer/Welsh Family proceedings Officer may be appointed to act as a Children's Guardian, Reporting Officer or Children and Family Reporter. The same officer may act in all three capacities.

4.1 The role of the Children's Guardian

The Children's Guardian is appointed where the child who is the subject of the proceedings is a party (unless the court is satisfied that it is not necessary to do so to safeguard the interests of the child). The role of the Children's Guardian is to act on behalf of the child, safeguard his interests and provide the court with assistance. His duties include:

- making the necessary investigations including contacting or seeking to interview appropriate persons and obtaining professional advice
- appointing a solicitor for the child
- giving appropriate advice to the child, having regard to his understanding
- instructing the solicitor on all relevant matters including the possibility of appeal

4.2 The role of Reporting Officer

A Reporting Officer is appointed where it appears that a parent is willing to consent to the placement of a child for adoption (see section 7 of this guidance) or the making of an adoption order (see section 8 of this guidance). His duties are to witness the signing of documents signifying consent.

4.3 The role of the Children and Family Reporter

A Children and Family Reporter is appointed to prepare a confidential report relating to the welfare of the child. His duties include:

- making the necessary investigations including contacting or seeking to interview the relevant persons
- obtaining professional assistance
- notifying the child of the contents of his report, including any reference to the views of the child in a manner appropriate to his age and understanding
- where a written report has been directed, filing the report
- attending all directions hearings
- advising the court of the wishes and feelings of the child
- considering whether it is in the best interests of the child to be a party and notifying the court of his opinion and reasons.

4.4 The role of the Litigation Friend

The court may ask the Official Solicitor, or a CAFCASS/Welsh Family Proceedings Officer to act as a Litigation Friend. Note that any person who meets the criteria in rule 53(3) of the Family Procedure (Adoption) Rules may fulfil this function. The duty of the litigation friend is to conduct proceedings on behalf of:

- (i) a “non-subject” child (a child under 18 who is made party to proceedings but is not the subject of proceedings).
- (ii) a “subject” child who does not have a Children’s Guardian.
- (iii) a person who is a “patient” within the meaning of the Mental Health Act 1983.

Main Features of the Adoption and Children Act 2002

5. The “welfare checklist”

The Act puts the needs of the child at the centre of adoption by aligning adoption law with the Children Act 1989 to make the welfare of the child the paramount consideration in all decisions relating to adoption. Section 1(4) of the Act provides that the court or adoption agency must have regard to the following when coming to such decision-making:

- the ascertainable wishes and feelings of the child in regard to being adopted which must be considered in the light of his age and understanding;
- the particular needs of the child;
- the likely effect on the child (throughout his life) of having ceased to be a member of the original family in becoming an adopted person;
- the age, sex, background and characteristics of the child which the court or agency considers relevant;
- any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering;

- the relationship the child has with relatives and with any person in relation to whom the court or agency considers the question of adoption to be relevant.

This consideration should include:

- (i) the likelihood of any such relationship continuing and the value to the child of it doing so;
- (ii) the ability and willingness of any relatives of the child, or of any such persons, to meet his needs and provide him with a secure environment in which to develop;
- (iii) the wishes and feelings of any relatives or other such persons regarding the child.

When the Act refers to the “needs” of the child it is implicit that it includes the “physical, emotional and educational” mentioned in s1(3)(b) of the Children Act 1989. Needs in this instance also embrace social, moral, psychological and health needs.

6. Provisions for the process of adoption

The Act establishes new processes for placing a child for adoption. The intention is to ensure that decisions as to whether adoption is the right option for the child, obtaining consent of the birth parent(s) or asking the court to dispense with it, are taken earlier in the adoption process than was previously the case. The system aims to:

- provide greater certainty and stability for children by dealing with consent to adoption *before* they have been placed;
- minimise the uncertainty for prospective adopters, who might otherwise face a contested court hearing at the adoption order stage; and
- reduce the extent to which birth families are faced with a “fait accompli” at the final hearing.

6.1 Placement for adoption by agencies

Section 18(1) provides that a child, other than a child who is less than 6 weeks old, can be placed for adoption along two routes:

- (i) with the consent of the child’s parents/guardians; or
- (ii) by an order of the court (a placement order) authorising a local authority to place the child for adoption.

A local authority must apply for a placement order in respect of a child if:

- (a) the child is placed for adoption by them or is being provided with accommodation by them;

- (b) there is no adoption agency authorised to place the child for adoption;
- (c) the child has no parent or guardian or the local authority considers that the conditions in section 31(2) of the Children Act 1989 are met and is satisfied that the child should be placed for adoption.

6.2 Placing children with parental consent

Section 19 provides for an adoption agency to place a child for adoption where it is satisfied that each parent or guardian of the child has given consent to placement.

This section is subject to the provisions of Section 52 relating to what is meant by consent (see paragraph 8.7 of this guidance). Consent must be given in a prescribed form, in full understanding of what is involved, and must be witnessed by a CAFCASS/Welsh family proceedings officer.

6.3 Advance consent to adoption

Section 20 enables a parent or guardian who consents to his/her child being placed for adoption by an adoption agency to give consent at the same time to the making of a future adoption order (known as “advance consent”).

A parent or guardian who gives advance consent to adoption may also give notice to the agency that he/she does not wish to be informed when an application for an adoption order is made. The provision thereby allows a parent to relinquish their child for adoption and to have no further involvement in the adoption proceedings.

Section 20(3) of the Act enables the person who gave advance consent to the making of a future adoption order to withdraw his/her consent in writing to the adoption agency.

7. Placement orders

Under the Act, “placement orders” introduced under the 2002 Act replace “freeing orders” under the Adoption Act 1976. The intention behind placement orders is that disputes relating to adoptions will be dealt with earlier in the process than they were previously.

A placement order can only be applied for by a local authority and is defined by section 21 of the Act as *“an order made by the court authorising a local authority to place a child for adoption with any prospective adopters chosen by the authority”*.

7.1 The criteria for making placement orders

The court cannot make a placement order unless the child is already subject to a care order or it is satisfied that:

- (i) the conditions in section 31(2) of the Children Act 1989 (see below) are met (save where the child is orphaned)
- (ii) each parent has consented to the child being placed for adoption and has not withdrawn consent
- (iii) parental consent should be dispensed with under the provisions of section 52 of the 2002 Act

Under section 21(2) of the 2002 Act, the “threshold criteria” for making a placement order are that:

- the child is already subject to a care order or
- the court is satisfied that the conditions (for making a care order) in section 31(2) of the Children Act 1989 are met or
- that a child has no parent or guardian

7.2 Parental consent to placement of child

Section 21(3) provides that the court may only make a placement order if it is satisfied that:

- (i) the parent has consented (and has not withdrawn that consent) to the child being placed for adoption with any prospective adopters who have been chosen by the agency
- (ii) the consent of the parent or guardian should be dispensed with.

The grounds for dispensing with consent are set out in section 52(1) (see paragraph 8.7 of this guidance) and, in coming to its decision, the court must observe section 1 welfare principles. The court will only make the order if satisfied that it is better for the child than not doing so.

7.3 How long the placement order lasts

The placement order remains in force until it is revoked by application of the local authority or the person who has permission of the court or the child (or person acting on his/her behalf), or an adoption order is made, or the child marries, forms a civil partnership or turns 18 years old.

7.4 Variation of a placement order

On a joint application by both local authorities, the court may vary a placement so as to transfer authorisation to place the child for adoption from one local authority to another. An application for variation of the placement order must be made to the family proceedings court (magistrates' court).

7.5 Revoking a placement order

A local authority or the child (or person acting on behalf of the child) may apply to revoke a placement order at any time. Any other person, e.g. the parent, may apply for the revocation of a placement order with the permission of the court if the child is not yet placed for adoption by the authority. Permission cannot be granted by the court unless it is satisfied that there has been a change in circumstances since the order was made.

Click on emboldened text to access the form A52: Application for revocation of a placement order and the A52 guidance notes.

8. The making of adoption orders

8.1 Adoption order defined

An adoption order gives parental responsibility for a child to the adopters and extinguishes the parental responsibility which any other person, including the birth mother and father, has for the child immediately before making the order. The legal effect is absolute and irrevocable. Unlike other orders relating to children it is for life.

8.2 Preliminaries to an adoption order

The Act imposes certain restrictions on who may adopt relating to (i) age (ii) domicile and residence. The following conditions must be satisfied before an adoption order is made:

- (i) The child needs to have lived with the prospective adopters before they can apply for an application order. Section 42 prescribes a period of at least:
 - 10 weeks for adoption where the child was placed for adoption with the applicant(s) by an adoption agency or under an order of the High Court, or where the applicant is a parent of the child;
 - 6 months for adoption by a partner of a parent;
 - 1 year for adoption by local authority foster parents
 - 3 years out of the last 5 years in any other case.

However, the court can give leave for an earlier application. Click here to access FP2 Application notice under Part 9 of the Family Procedure (Adoption) Rules 2005 and accompanying guidance notes for completion.

- (ii) The court must be satisfied that the agency, or the local authority in non-agency cases, has had sufficient opportunities to see the child with the applicants in their home.
- (iii) Section 44(2) requires non-agency applicants to have given their local authority at least 3 months notice of intention to adopt before they can make an application.

8.3 The three conditions for making adoption orders

Section 47 sets out the conditions which must be satisfied before the court makes an adoption order. One of the following conditions must be satisfied:

- (i) The court must be satisfied that each parent consents to the making of an adoption order, have given advance consent to the making of the adoption order under section 20 and have not withdrawn that consent or that the parent's consent should be dispensed with.
- (ii) The child has been placed for adoption with prospective adopters by an adoption agency and
 - **EITHER**

the child was placed for adoption with the consent of each parent (section 19) and consent of the mother was obtained when the child was at least 6 weeks old
 - **OR**

the child has been placed for adoption under a placement order and, in either case, no parent opposes the making of the adoption order.
- (iii) The child is free for adoption by virtue of a freeing order made in Scotland or Northern Ireland.

8.4 Who may apply for an adoption order

The Act enables single people and couples whether of the same sex or different sexes, married or unmarried, or civil partners to apply to adopt a child thereby widening the pool of potential adoptive parents. It will be for the adoption agencies and ultimately the courts to decide whether the individual or couple is suitable to adopt. In order to be approved as adoptive parents, a couple would need to show that they have a stable and lasting relationship and that they can provide a loving family environment for the child.

The Act continues the policy of imposing certain restrictions on the eligibility of those persons who wish to adopt a child in the UK. The qualifications for eligibility relate to (i) age (ii) domicile and residence.

8.5 Adoption by a couple

Section 50(1) enables a couple to apply to adopt a child provided that, at the time the adoption order is made:

- both of them are at least 21 years of age, or
- one of them is the mother or father of the child to be adopted and is at least 18 years of age, and the other is at least 21.

In addition eligibility further rests on one of two conditions being met:

(i) **EITHER**

at least one of the couple is domiciled in a part of the United Kingdom, the Channel Islands or the Isle of Man [Section 49(2)].

(ii) **OR**

both members of the couple have been habitually resident in a part of the United Kingdom, the Channel Islands or the Isle of Man for a period of at least one year, ending with the date of the application to the court [Section 49(3)].

These conditions apply to domestic adoption only and not to any couple or individual wishing to apply for a section 84 order (to adopt a child abroad).

A new change of direction is marked by the deletion of the marital status as a prerequisite for joint applications. An application can now be made not only by a married couple but also by two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.

8.6 Adoption by one person

Section 51 sets out who may make an application to adopt alone. A person of 21 years, who is not married or a civil partner, can make an application.

A married person or a civil partner can make an application. A partner of a natural parent (which includes a person married to the parent) may adopt the child of that natural parent (section 51(2)). This removes the previous anomaly of the parent being required to make a joint application with the step-parent to adopt his/her own child.

Click on the emboldened text to access the form A58: Application for an adoption order and the A58 guidance notes.

8.7 Parental etc. consent

Section 52 of the Act applies to placement and adoption and covers the granting and withdrawal of consent to both (including advance consent to adoption).

Subsection 1 provides that the court cannot dispense with the consent of any parent or guardian of a child to make a placement or adoption order unless satisfied that:

- (i) the parent cannot be found or is incapable of giving consent or
- (ii) the welfare of the child requires parental consent to be dispensed with (in accordance with the paramount consideration and welfare checklist)

Subsection 5 defines “consent” as “*consent given unconditionally and with full understanding of what is involved but a person can give consent to adoption without knowing the identity of the persons in whose favour the adoption will be made*”.

The Family Procedure (Adoption) Rules 2005 prescribe the appointment of a Reporting Officer (see paragraph 4.2 of this guidance) to ensure that a parent fully understands the consequences of consenting to placement or making of an adoption order and to witness the signing of the consent form.

9. Post-Adoption Contact

Section 46(6) provides for post-adoption contact. Before making an adoption order the court has a duty to consider whether there should be arrangements for allowing a child to have contact with another person. For this purpose the court must consider any existing or proposed arrangements and obtain any views of the parties.

As a consequence, the court may make an order for contact under section 8 of the Children Act 1989 at the final adoption hearing.

Whilst the Act appears to support a “clean break” with the birth parents, Article 8 of the European Convention on Human Rights obliges the court to be satisfied that severing contact between the child and his/her birth family is a proportionate response and justified by the paramount consideration of child’s welfare. If it is not, the court has a duty to act compatibly with Article 8 by overriding any discretion given to the adopters under the adoption order.

Given the value of post-adoption contact, particularly in cases involving older children, it is important that the court should explore and fully deal with the issue in every case.

10. Disclosure of information in relation to a person’s adoption

The 2002 Act provides a more consistent approach for access to information and provides adoption agencies with a clear framework within which they are required to consider certain issues – such as an adopted person’s welfare – before deciding whether to disclose sensitive identifying information about individuals.

Information about a person’s adoption is held by three sources:

- (i) the adopted person’s adoption agency (which would normally hold the case record and other information)
- (ii) the Registrar General (who holds birth records and basic information about the adopted person’s adoption i.e. his adoptive name and the names of his adoptive parents), and

- (iii) the court, which holds reports submitted to it and records of the adoption proceedings.

Under new provisions, the Registrar General retains his duty to maintain the Adopted Children Register and the Adoption Contact Register. A person adopted prior to 30th December 2005 retains the right to apply to the Registrar General for the information they need to obtain a copy of their original birth certificate. They may also apply to the agency that arranged their adoption for access to their adoption file. However, a person adopted on or after 30th December 2005 no longer has the right to apply direct to the Registrar General for the information they need to obtain a copy of their original birth certificate. Any application must now be made to the adoption agency. This is because the agency is best placed to decide about the disclosure of sensitive identifying information and to provide counselling, support and advice.

Sections 56-65 of the Act introduce provisions on

- (i) the information that adoption agencies must keep in relation to a person's adoption and the length of time for which it must be kept
- (ii) the information that agencies must disclose to adopted adults on request, and
- (iii) the information adoption agencies may release to adopted adults, birth parents and others.

The details of the new provisions in relation to adoptions both before and after 30th December 2005 are set out in the following regulations which can be accessed by clicking on the links below:

[Disclosure of Adoption Information \(Post-Commencement Adoptions\) Regulations 2005](#)

[Adoption Information and Intermediary Services \(Pre-Commencement Adoptions\) Regulations 2005](#)

[Adoption Children and Adoption Contact Registers Regulations 2005](#)

[Adoptions Agencies Regulations 2005](#)

The various sets of regulations are underpinned by statutory guidance which is available at www.everychildmatters.gov.uk/adoption

10.1 Disclosing information to an adopted adult (by the Court)

Section 60 of the Act makes provision for the disclosure of information held by the court to adopted adults.

Under the new arrangements there are now two systems in place that govern the disclosure of information from court records to the adopted adult:

Adoptions which take place on or after 30th December 2005

Sections 60(4) and (5) provides that any person adopted on or after 30th December 2005 has a right, on reaching the age of 18, to receive from the court which made the adoption order, a copy of certain documents relating to their adoption, in so far as they do not contain any protected information.

These documents are prescribed in Rule 84 of the Family Procedure (Adoption) Rules 2005 and include:

- the application form for an adoption order (but not the documents attached to that form);
- the adoption order and any other orders relating to the adoption proceedings,
- orders allowing a person contact with the child after the adoption order was made,
- any transcript of the judgment given by the court or the court's written reasons; and
- reports made to the court by a children's guardian, reporting officer or children and family reporter, local authority or an adoption agency

Before any documents are sent to the applicant the court must remove any "protected information". Protected information is defined by section 57(3) of the 2002 Act and includes any information which the agency has obtained from the Registrar General following an application from an adopted person under section 79(5) or any other information which would enable an adopted person to obtain a copy of their original birth certificate and any information kept by the agency about an entry relating to an adopted person on the Adoption Contact Register.

In addition, protected information also covers any information which is about an adopted person or any other person (such as natural parents or siblings, adoptive parents or former carers of the child) which 'is or includes identifying information about the person in question'. Identifying information means information which, whether taken on its own or together with other information disclosed by the adoption agency, identifies the person or enables the person to be identified. This will include names, residential, educational and employment addresses, medical information, social worker reports, legal or medical information, photographic or audio-visual material, cards and letters from birth relatives.

An adopted adult in this category may also approach the court for disclosure of further information, at the court's discretion. The adopted adult may seek a direction from the court that a document or order held by the court in relation to proceedings under the 2002 Act should be open to inspection or that a copy of that document/order should be given to them. In such cases, an application can be made under rule 83 of the Family Procedure (Adoption) Rules 2005.

Adoptions which take place prior to 30th December 2005

A person who was adopted prior to 30th December 2005 retains the right, on reaching the age of 18, to apply to the Registrar General for the information they need to obtain a copy of their original birth certificate. They may also apply to the agency that arranged their adoption for access to their adoption file.

Adopted adults and their adult birth relatives also have a new right, under section 98 of the Act, to apply for an intermediary service. Intermediary services will be provided by intermediary agencies (adoption agencies or registered adoption support agencies). An adopted adult (or an adult birth relative of an adopted person) can ask an intermediary agency to trace former relatives and establish if they wish to have contact. Intermediary agencies will be able to obtain information from the adoption agency, the Registrar General and the court to enable them to do this work.

An adopted adult in this category still retains the right to approach the court for disclosure of information, at the courts' discretion. In such cases, an application can be made under rule 53 (4) of the Adoption Rules 1984 or rule 32(6) of the Magistrates' Courts (Adoption) Rules 1984.

10.2 Forms and documents

For adoptions which take place on or after 30th December 2005, the adopted person must make an application to the court, using Form A64, click on the emboldened text to access the A64 guidance notes on completion of the form.

Attached to this form must be a fully certified copy of the entry in the Adopted Children Register, which relates to the applicant.

This form must be taken in person to the court that made the adoption order, together with evidence of the applicant's identity showing a photograph and signature, such as a driving licence or a passport.

10.3 Fees

There are currently no fees charged where an adopted person makes an application direct to the court, however, this position is subject to change in the future.

The court may charge a fee (not exceeding £20) to an intermediary agency for disclosing information from court records.

11. Communication of Information Relating to Children Proceedings

Section 62 of the Children Act 2004 made changes to the law relating to disclosure of information in family proceedings cases involving children.

For adoption proceedings, rule 78 of the Family Procedure (Adoption) Rules 2005 and the practice direction which supplements it allow parties and other specified people to disclose certain information to other specified people, without needing the specific permission of the court and without being in contempt of court.

11.1 Sharing Information

Rule 78 of the Family Procedure (Adoption) Rules 2005 allows information about proceedings to be shared with:

- a person
- their legal representative or other professional legal adviser;
- an officer of the Service or a Welsh family proceedings officer;
- a welfare officer;
- the Legal Services Commission;
- an expert authorised by the court;
- a professional working to protect children.

11.2 Sharing information with other people

The practice direction supplementing rule 78 of the Family Procedure (Adoption) Rules 2005 also allows certain people to share information with a number of other people, so long as it is for one of the specific reasons set out below.

A party can share any information relating to proceedings with:

- A lay adviser (e.g. Citizens Advice Bureau) or a McKenzie friend (a person granted permission by the court to assist the party, give advice, take notes etc.) so the party can get help and advice in connection with the case and in court.
- A spouse, civil partner, cohabitant or close family member for the purpose of confidential discussions enabling the party to receive support.
- A health care professional or a person/body providing counselling services for children or families to enable the party of any child to obtain health care or counselling.
- The Children's Commissioner or the Children's Commissioner for Wales to refer a matter to affecting the interests of children.
- A person or body conducting an approved research project so that they can carry out an approved research project.
- A mediator so that the party can receive mediation in relation to the proceedings.

- A person or body responsible for determining/investigating complaints about legal representatives or advisers so that they can investigate or determine the complaint in question.

A person can also share the text or summary of the whole or part of a judgment given in proceedings with:

- An MP(Member of Parliament), MEP(Member of European Parliament) elected in England and Wales, National Assembly member, or a Member of the House of Lords to enable the advice to be given or to investigate any complaint or raise any question of policy or procedure.
- The General Medical Council for the purpose of making a complaint to the GMC.
- A police officer so they can investigate a crime, or whether a crime has been committed.
- A member of the Crown Prosecution Service so that it can carry out its legal functions.

11.3 Legal Representatives/Professional Legal Advisers

A legal representative/professional legal adviser can share any information relating to proceedings with a person or a body assessing quality assurance systems so that they can get a quality assurance assessment.

You legal representative/professional legal adviser can also share information relating to the proceedings with an accreditation body so that they can obtain accreditation.

Important Notes:

It is essential that information is shared in a safe way. This is because the information is confidential and may contain personal or sensitive information about the party, the child(ren) concerned, or other adults.

The person the information is being shared with must understand why they are receiving it and that they can only use the information for the reason they receive it (this guidance could be referred to them).

Apart from the circumstances described in this note, information cannot be shared with any other person for any reason without the specific permission of the court. Despite these rules, the courts can still permit or restrict disclosure of any information in any particular case. The rules do not allow disclosure of information to the media or changes to the arrangements for hearing family cases in private.

Further information can be obtained by visiting www.courtservice.gov.uk or forms and guidance at www.hmcs.gov.uk

12. Intercountry adoption

The Act makes provision to incorporate many of the measures of the Adoption (Intercountry) Aspects Act 1999 and extends those measures with new safeguards and penalties. The 1999 Act:

- applies to the United Kingdom
- amended both the Adoption Act 1976 and the Adoption (Scotland) Act 1978.
- makes provision to regulate intercountry adoption
- enables the United Kingdom to ratify the Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption
- introduces proper procedures for bringing children into the United Kingdom.
- clarifies that local authorities have a duty to provide an intercountry adoption service
- provides that children who are the subject of a Convention adoption will automatically receive British nationality

The following paragraphs highlight the main changes relating to intercountry adoption under the 2002 Act. The Department for Education and Skills provide greater detail before/outside the court process at:

<http://www.dfes.gov.uk/adoption/intercountry/>

12.1 “Full” adoptions and “simple” adoptions

Adoption law in the United Kingdom recognises only one type of adoption which is known as “full adoption”. This creates a new and binding legal relationship between the child and adoptive parents that severs all legal ties between the child and his birth parents. A child adopted in the United Kingdom is conferred the status of a child *“as if born as the child of the adopters or adopter”* under the provisions of section 67(1). In some countries, however, certain forms of adoption do not have the effect of totally severing all ties from the birth parents and these are known as “simple adoptions”.

Article 26 of the Hague Convention provides for the recognition of both full and simple adoptions.

Article 27 of the Hague Convention allows a receiving state to convert a simple adoption into a full adoption if its laws permit, subject to having obtained the consent of the birth parents.

The Adoption and Children Act 2002 provides that where England and Wales are the receiving states, the “Central Authority” (presently the Department for Education and Skills) will ensure that the birth parents understand the effects of simple adoption in England and Wales. The Authority will also seek to obtain the consent of birth parents to a full adoption prior to a Convention adoption order being made here or abroad.

Click on the emboldened text to access Form A59 Application for a convention adoption order and the A59 guidance notes.

Click on the emboldened text to access Form A60 Application for an adoption order (excluding a Convention adoption order) where the child is habitually resident outside the British Islands and is brought into the United Kingdom for the purposes of adoption and the A60 guidance notes.

12.2 Modification of section 67 for Hague Convention adoptions

Section 88 of the Adoption and Children Act 2002 makes possible the recognition of simple adoption in England and Wales in circumstances where they are not the receiving State.

Note that all simple adoptions will be treated as a full adoption by operation of the law. If, however, it is felt that it would be more favourable to the welfare of the child to maintain the provisions of a simple adoption made abroad (rather than converting to full adoption), an application can be made to the High Court.

Section 88 makes provision for the High Court to disapply in its entirety section 67(3) which recognises a child as *“not being a child of any person other than the adopter”* OR specify the extent to which the direction disapplies, if it is satisfied that the conditions under section 88(2) are met, namely that:

- (i) under the law of the country that made the adoption order, the adoption is not a full adoption.
- (ii) consent has not been given for a full adoption or that the United Kingdom is not the receiving state
- (iii) it would be more favourable to the adopted child for a direction to disapply to any extent section 67(3).

Click on the emboldened text to access Form A62 Application for a direction under section 88(1) of the Adoption and Children Act 2002 and the A62 guidance notes.

12.3 Restrictions on overseas or Hague Convention adoptions

Section 89(1) provides for the High Court to annul a Convention adoption or Convention adoption order on the grounds that the adoption is contrary to public policy.

Click on the emboldened text to access Form A63 Application for an order to annul a Convention adoption or Convention adoption order or for an overseas adoption or determination under section 91 to cease to be valid and the A63 guidance notes.

Section 90 provides that an application under section 89(1):

- (i) must be made in the prescribed manner and within any prescribed period

- (ii) cannot be made if the adopted person or adopters were “*habitually resident in England and Wales immediately before the application*”

13. Restrictions on arranging adoptions, etc

The Act reaffirms and strengthens the former safeguards that permitted only adoption agencies to make arrangements for adoption and to advertise for adoption by:

- extending and reinforcing the former prohibitions on illegal placements, including tougher penalties
- extending and reinforcing the restrictions on advertising to include both traditional media and electronic means, including the internet
- imposing for the first time express restrictions on the preparation and submission of reports

13.1 Prohibitions on making arrangements

Section 92(2) set out the nine restrictions in relation to making an adoption order which are imposed on persons who are neither (i) an adoption agency nor (ii) acting by authority of a High Court Order. The intention is to make it illegal to follow procedures other than those prescribed by law. A contravention of section 92 is a summary offence.

13.2 Prohibition on reports

Section 94 is a new provision which imposes restrictions on the preparation of reports in connection with adoption with the aim of ensuring that only professionally qualified staff carry out the assessments and the preparation of reports. Again, a contravention of this provision is a summary offence.

13.3 Prohibition on payments

Section 95 prohibits certain payments or rewards in connection with adoption. It is an offence for a person to:

- (i) make any such payment or reward
- (ii) to agree or offer to make such payment
- (iii) receive or agree to receive or attempt to obtain payment for
 - a. the adoption of a child
 - b. the giving of consent required in connection with adoption
 - c. the taking of any of the nine steps prohibited by section 92
 - d. the preparation or submission of a report in breach of section 94

The prohibition does not apply to “excepted payments” as defined in section 96, which permit the legitimate expenses of adoption agencies and persons applying for adoption.

13.4 Prohibition on Advertisements

Section 123 imposes restrictions carrying criminal sanction for publishing or distributing an advertisement or information indicating that:

- the parent wants his child to be adopted
- a person wants to adopt a child
- a person (other than the adoption agency) is willing to take any step in arranging for the adoption of a child as specified in section 92
- a person (other than an adoption agency) is willing to receive a child handed over to him with a view to the child’s adoption by him or another person
- a person is willing to remove a child from the UK for the purposes of adoption.

14. Adoption and Children Act Register

Section 125 enables the Queen to make an Order in Council allowing the Secretary of State to establish and maintain an “Adoption and Children Act Register” which will cover England and may also cover Wales and/or Scotland.

The register will contain details of children suitable for adoption and prospective adopters who have been approved by adoption agencies. This information will be used to suggest adoptive families for children in cases where a local match is not suitable for the child, or cannot be found within an agreed period of time. It will also contain additional prescribed information about such people in respect of events occurring to them after their inclusion in the register so as to record information about the stability of adoptive placements. The remit of the register may also be used to cover children needing other types of permanent placements, such as special guardianship.

Main amendments to the Children Act (1989)

Although the Children and Adoption Act 2002 has made important amendments to the position of step-parents, the direction of the reforms has been towards alternatives to adoption. This is illustrated by the amendments which the 2002 Act has made to the Children Act 1989.

15. Parental responsibility of unmarried fathers and step-parents

Section 111 of the 2002 Act amends section 4 of the Children Act 1989 to provide that a father who is not married to the mother at the time of the birth of the child is to have parental responsibility. In order for this to happen,

registration or re-registration of the birth must take place according to the provisions of the Births and Deaths Registration Act 1953. This section was commenced on 1 December 2003.

Section 112 inserts section 4A into the Children Act 1989 to enable a step-parent to acquire parental responsibility for a child of his spouse by an agreement between the step-parent and the parent(s) who have responsibility for the child, or by a court order.

Click on the emboldened text to access the parental responsibility agreement forms:

- **C(PRA1)** for agreements between Mother and Father and;
- **C(PRA2)** for Step-parent agreements.

The intention is to provide an alternative to adoption where a step-parent wishes to acquire parental responsibility for his or her step-child whilst not removing parental responsibility from the other birth parent and does not legally separate the child from membership of the family of the other birth parent.

16. Residence orders: extension to age of 18

Section 114 of the 2002 Act amends section 12 of the Children Act 1989 to enable the court to direct that a residence order made in favour of any person who is not a parent or guardian of a child may continue in force until the child reaches 18. This will deliver enhanced security where the holder of the residence order who is not the child's parent or guardian is caring for the child on a long term basis.

17. Special Guardianship

Section 115(1) inserts new sections 14A to 14G into the Children Act 1989 to provide for the new "special guardianship order" (SGO). The intention is for this order to meet the needs of those children who cannot live with their birth parents and for whom adoption is not appropriate but who could still benefit from a legally secure placement, as in accordance with welfare checklist principles.

The new sections provide for who may apply for an order, the circumstances in which orders may be made, the nature and effect of special guardianship orders, and for local authority support services for special guardians.

17.1 The role of the special guardian

The special guardian appointed by the order has parental responsibility for the child and is "*entitled to exercise that parental responsibility to the exclusion of any other person with parental responsibility*" with two exceptions:

- (i) It does not affect the operation of any rule of law which requires the consent of all those with parental responsibility (for example, the sterilisation or circumcision of the child).
- (ii) Nor does it affect any rights which a natural parent has in relation to the adoption of the child or placement for adoption.

The special guardian has responsibility for day to day decisions about caring for the child and for taking decisions about his upbringing. He must also take reasonable steps to inform the parents if the child dies. The parents, however, retain some limited rights:

- They have the right to consent (or not) to placement for adoption or the adoption of the child.
- Before making a SGO, an express duty is imposed upon the court to consider whether a contact order should be made, which would enable continued contact with the birth family.

The aim of a SGO, therefore, is to provide legal security, whilst preserving the 'basic' link between the child and their birth family.

17.2 How a special guardianship order differs from an adoption order

Unlike adoption, the relationship of the child with his birth parents is not severed, but preserved. Although their ability to exercise their parental responsibility is circumscribed, they nevertheless remain legally the parents of the child.

A further distinction from an adoption order is that special guardianship orders can be varied or discharged. Parents require permission to apply for a discharge and the court will only grant permission where there has been a significant change in circumstances since the making of the SGO.

17.3 The criteria for the application of a special guardianship order

Applicants have to give written notice of three months to the local authority of their intention to apply for an order. The local authority is under a duty to investigate and prepare a report to the court as to the suitability of the applicants. The court may not make a special guardianship order unless it has received such a report.

17.4 Who can make an application for a special guardianship order

The court may make an SGO on the application of:

- any guardian of the child;
- any individual in whose favour a residence order is in force or has the consent of all those with a residence order;
- anyone with whom the child has lived for at least 3 years out of the last 5 years;

- where the child is in the care of the local authority, anyone with the local authority's consent;
- anyone who has the consent of all those with parental responsibility;
- local authority foster parents may apply as of right where the child has lived with them for at least one year immediately preceding the application;
- anyone else, including the child, who has leave of the court.

Once a SGO is in force no one can cause the child to be known by a new surname or take the child out of the UK without permission of the court. A Special Guardian may take the child out of the UK without permission for a period of less than three months.

17.5 Effect of a special guardianship order on other orders

A SGO discharges an existing care order or an order for contact with a child in care. A care order or a residence order may be made while a SGO is in force. The SGO is not automatically discharged, but the local authority or person with the residence order has a right to apply for a discharge or variation of the SGO.

Where a placement order is in force, no SGO may be made unless an application has been made for a final adoption order. The person applying for the SGO must have obtained the permission of the court under section 29(5)(b) of the 2002 Act or is himself the guardian as under section 47(5).

Please click on the emboldened text for access to applications for Special Guardianship orders; are made on Form C1 (or Form C2 where appropriate) and Form C13A.

Please click on Special Guardianship leaflet: A guide for court users for further information.

18. Representations about services under the Act

Section 117 of the 2002 Act amends sections 24D and 26 of the Children Act 1989 by making further provision for inquiries carried out by local authorities into representations (complaints) about services provided under the 1989 Act. It implements some of the changes that were taken forward by the "Listening to Learn" consultation (2002) of the Department for Education and Skills on improving social services complaints procedures which require primary legislation.

Section 119 of the 2002 Act inserts a new section 26A into the Children Act 1989 that places a duty on local authorities to make arrangements for granting assistance to children in care and leaving care who make or intend to make representations under sections these sections. Subsection 119(2) of the 2002 Act provides that "arrangements" will include assistance by way of representation (through advocacy services).

19. Review of cases of looked after children

Section 118 of the 2002 Act amends section 26 of the Children Act 1989 (review of cases of looked after children) to provide that regulations may require a local authority to review the care plan of a looked after child. These requirements apply in the case of both children who are subject to a care order and those who are accommodated by the local authority. When reviewing a section 31A (“care”) plan the authority may revise the plan or make a new one where necessary. This section came into force on 27 September 2004 under the responsibility of the Department for Education and Skills.

New subsection 2(k) further requires the local authority to appoint an “Independent Reviewing Officer” to carry out functions listed in 118(2A):

- (i) participating in the review of the case in question
- (ii) monitoring the performance of the authority’s function in respect of the review
- (iii) referring the case to a CAFCASS officer if appropriate

20. Amendment to the definition of “harm” in the 1989 Act

Section 120 of the 2002 Act clarifies the section 31 definition of harm in the Children Act 1989 by making clear that the harm a child may be at risk of suffering includes *“any impairment of the child’s health or development as a result of witnessing the ill-treatment of another person, such as domestic violence”*. Ill-treatment is broader than physical violence and includes sexual abuse and forms of ill-treatment which are not physical, such as seeing a parent being harassed or intimidated by another person. The extended definition will apply to all proceedings where the court applies the “welfare checklist” of section 1(3) of the 1989 Act and includes contact or residence orders. This section was commenced on 31 January 2005.

21. Interests of children in public law (“specified”) proceedings

Section 122 of the 2002 Act amends section 41 of the Children Act 1989 to the effect that:

- (i) An application for the making or revocation of a placement order under this Act becomes specified proceedings. This means that a child will be made a party to the case and will have a Children’s Guardian and a solicitor appointed to represent his interests (unless the court decides otherwise).
- (ii) Proceedings which may also be specified proceedings include for example *“proceedings for the making, varying or discharging of a section 8 order”*. This could include applications for residence or contact orders.

- (iii) The Lord Chancellor may make rules to provide for the separate representation of children. (At the time of writing this Guidance however, no rules have yet been established to allow for such provision).