



JUDICIARY OF
ENGLAND AND WALES

President's Guidance

Adoption: The New Law and Procedure

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Aim

1. On 30 December 2005 the Adoption and Children Act 2002 came into force. The 2002 Act reforms the law on adoption and the Family Procedure (Adoption) 2005 Rules overhaul adoption procedure. The overriding aims of the reforms are to improve the adoption service, to reduce delay in the court process and to promote the use of adoption as an option for the permanent placement of children in need.
2. This guidance is issued by the President of the Family Division with the approval of the Lord Chancellor. Its aim is to provide an outline of the key changes to the law relating to domestic adoptions as a compass to guide all court users through the new reforms affecting the court process.
3. The guidance should be applied to all placement applications and adoption applications issued after 30 December 2005.

The Principal Reforms: a summary

4. The 2002 Act provides the framework for a new approach to adoption law. It:
 - (i) Aligns adoption law with the Children Act 1989 by making the child's welfare the paramount consideration in all decisions relating to adoption;
 - (ii) Provides a new welfare based ground for dispensing with parental consent;
 - (iii) Abolishes freeing for adoption orders and provides new measures for placement for adoption either with parental consent or under a placement order;
 - (iv) Overhauls eligibility to apply for adoption orders by enabling single persons, married couples and, for the first time, unmarried couples to apply;
 - (v) Strengthens the restrictions on arranging adoptions and advertising children for adoption other than through adoption agencies and introduces a new restriction relating to reports; and
 - (vi) Widens the range of options for providing permanence for children by amending the Children Act 1989 to introduce a new special guardianship order.

Welfare

5. Section 1 is the overarching provision of the 2002 Act and sets out the following mandatory considerations for the court or adoption agency to take into account whenever coming to a decision relating to the adoption of a child:
 - (i) The paramount consideration must be the child's welfare throughout the child's life (s 1(2));
 - (ii) Any delay in coming to a decision is likely to be prejudicial to the child's welfare (s 1(3));
 - (iii) Regard must be had to a 'welfare checklist' of factors (s 1(4)) which includes
 - The likely effect on the child (throughout the child's life) of having ceased to be a member of the original family and become an adopted person (s 1(4)(c));
 - The relationship which the child has with relatives and with any other person with a relevant relationship (s 1(4)(f));
 - (iv) Due consideration must be given by an adoption agency to the child's reli-

gious persuasion, racial origin and cultural and linguistic background (s 1(5));
(v) The whole range of powers available under the 2002 Act and the Children Act 1989 must always be considered and the court must not make an order unless it considers that the making of the order would be better for the child than not doing so (s 1(6)).

Placement for adoption

6. The 2002 Act introduces a new legal process for placing children for adoption, which is intended to provide greater certainty and stability for children by dealing as far as possible with consent *before* they are placed with prospective adopters.

7. A child may only be placed for adoption:

- (i) Where there is the consent of the parent, or
- (ii) Where there is no parental consent, under a placement order.

Placement and consent

8. S 19 of the 2002 Act authorises an adoption agency to place a child for adoption where it is satisfied each parent or guardian has consented to the child being placed for adoption:

- (i) With prospective adopters identified in the consent; and/or
- (ii) With any prospective adopters who may be chosen by the agency,

and that consent has not been withdrawn.

9. 'Consent' means 'consent given unconditionally and with full understanding of what is involved, but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made' (s 52).

10. A parent who consents to a child being placed for adoption by an adoption agency may at the same time or at a subsequent time give advance consent to the making of a future adoption order (s 20).

11. Consent must be given in the form prescribed by the Practice Direction *Forms* or a form to like effect [The Practice Directions referred to in the Guidance are attached to the Family Procedure (Adoption) Rules 2005] (rule 28):

- Consent to placement for adoption
 - With any prospective adopters [Form A100]
 - With identified prospective adopters [Form A101]
 - With identified adopters and, if the placement breaks down, with any prospective adopters [Form A102];
- Advance consent to adoption [Form A103].

12. Where the parent is prepared to consent, the adoption agency must request CAF/CASS to appoint an officer of the Service or the National Assembly of Wales to appoint a Welsh family proceedings officer for the purposes of signification

by that officer of the consent.

13. In placement and adoption proceedings, the court will appoint a reporting officer where it appears that the parent is willing to consent. The reporting officer's duty is to witness the signature by the parent on the document by which consent is given.

14. Where a child is placed with consent, the birth parents can at any time, *until an application for an adoption order is made*, withdraw their consent.

(i) Where consent has not been withdrawn before an adoption application is made, the birth parent may oppose the final adoption order only with the leave of the court, which may only give leave where there has been change of circumstances.

(ii) Withdrawal of consent to placement for adoption or the making of a future adoption order (other than by notice given to the adoption agency) must be in Form A106 or a form to like effect.

15. Where the child is placed for adoption and the consent is withdrawn, the child must be returned to the birth parents within 14 days. If the consent is withdrawn before the child has been placed, the child must be returned within one week. Where, however, the child is being accommodated by the local authority and the authority has applied for a placement order, the child may not be removed without the court's leave.

Placement order

16. Under s 21 of the 2002 Act 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.'

17. The court may not make a placement order unless:

(i) The child is *subject to a care order or the conditions in section 31 (2) of the Children Act 1989 are met* or the child has no parent or guardian; and

(ii) *Each parent has consented to the child being placed for adoption and has not withdrawn consent or the parent's consent should be dispensed with* under s 52 of the 2002 Act.

18. Under s 52 (1) of the 2002 Act the court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or the making of an adoption order in respect of a child unless it is satisfied that:

(i) The parent or guardian cannot be found or is incapable of giving consent, or

(ii) The welfare of the child requires the consent be dispensed with.

19. Where the applicant requests the court to dispense with the consent of any parent to the child being placed for adoption or to the making of the adoption order, he must (rule 27):

(i) Give notice of the request in the application form or at a later stage by filing a written request setting out the reasons for the request.

(ii) File a statement of facts setting out a summary of the history of the case and any other facts to satisfy the court that one of the two grounds in s 52(1) (paragraph 18 above) is met.

Procedure

20. The Family Procedure (Adoption) Rules 2005, Part 5 apply to applications for placement orders. The overriding objective in rule 1 applies to placement order proceedings (see paragraph 50 below).

(i) The local authority is the applicant. The relevant form is Form A50. Proceedings are started when the court officer issues the application at the request of the applicant (rule 19).

(ii) The respondents are (a) each parent who has parental responsibility (b) any person in whose favour an order under the Children Act 1989 is in force (c) any adoption agency or voluntary organisation that has parental responsibility for, is looking after or is caring for the child (d) the child (e) the parties to care order proceedings where those proceedings have led to the application for the placement order (rule 23).

21. As soon as practicable after the application has been issued (rule 24):

(i) The court will:

- Set a date for the first directions hearing (which must be within four weeks beginning with the date on which the application is issued: rule 25). Instead of setting a date, the court may give the first directions;
- Appoint a children's guardian and/or reporting officer (rules 59 and 69);
- Request a report on welfare (if required);
- Set a date for the hearing of the application.

(ii) The court officer will (amongst other things)

- Give notice of any directions hearing set by the court to the parties and any CAFCASS officer or Welsh family proceedings officer;
- Serve copies of the application on (a) each parent with parental responsibility (b) any CAFCASS officer or Welsh family proceedings officer and (c) any other person directed by the court.

(iii) If a notice has been given under rule 27 requesting the parent's consent be dispensed with, the court officer must inform the parent of the request and send a copy of the statement of facts to (a) the parent, (b) any CAFCASS officer or Welsh family proceedings officer (c) the local authority (to whom a notice of intention to adopt has been given) and (d) any adoption agency that has placed the child for adoption.

22. Additionally, as soon as practicable after issue (rule 24):

(i) The court will consider whether a report giving the local authority's reasons for placing the child for adoption is required and, if so, direct the local authority to prepare such a report; and

(ii) The court or court officer will ask either the CAFCASS officer or the Welsh family proceedings officer to file any form of consent to the child being placed

for adoption.

23. The steps to be taken under rule 26 at the first directions hearing, which the parties or their legal representatives must attend (unless the court otherwise directs), include:

- (i) Fixing a timetable for the filing of the local authority report on placement, any report from the children's guardian, reporting officer or children and family reporter, any amended statement of facts and any other evidence and give directions relating to the reports and other evidence;
- (ii) Considering alternative dispute resolution procedure;
- (iii) Considering the joining of other parties;
- (iv) Giving directions relating to the appointment of a litigation friend;
- (v) Transfer;
- (vi) Directions about:
 - Tracing parents or any other relevant person
 - Service of documents
 - Disclosure of information and evidence to the parties (subject to issues of confidentiality: s 77)
 - The final hearing.

24. At the final hearing any person who has been given notice by the court under s 141(3) and (4) of the date and place where the application will be heard and of the fact that they need not attend (unless they wish or the court requires) may attend the final hearing and be heard on the question whether an order should be made (rules 31 and 32). The court cannot make a placement order unless a legal representative of the local authority attends the final hearing. The attendance of the child is required, but the court may dispense with the need for the child to attend.

25. Once a placement order has been made, only the local authority can remove the child.

26. The placement order remains in force until it is revoked (s 24) or an adoption order is made or the child marries or becomes a civil partner or attains the age of 18. The application form for revocation of a placement order is Form A52. The parents may not apply to revoke the order unless (i) the court gives leave on the grounds that the circumstances have changed since the order was made and (ii) the child is not placed for adoption by the authority.

27. During placement the parents' parental responsibility is not extinguished. It is shared with the prospective adopters and the adoption agency, with the agency determining the extent to which parental responsibility should be restricted: s 25.

Contact

28. While the adoption agency is authorised to place the child for adoption (whether by consent or under a placement order), contact is dealt with under s 26 of the 2002 Act. Any existing contact order made under s 8 of the Children Act 1989 ceases to have effect. Once the adoption agency is authorised to place a child for adoption, it must consider what arrangements it should make for allowing any person contact with the child. Before making a placement order

the court is under a duty to consider those contact arrangements.

29. The Family Procedure (Adoption) Rules 2005, Part 5 apply to contact applications under s 26. The overriding objective in rule 1 applies (see paragraph 50 below). The Form to be used for an application for a contact order under s 26 is Form A53.

(i) The applicants may include the child, the adoption agency or any parent or guardian or relative.

(ii) The respondents include the adoption agency authorised to place the child for adoption, the person with whom the child lives or is to live, each parent with parental responsibility and the child in certain specified circumstances.

Name change/Removal abroad

30. While a child is placed for adoption, no-one may cause a child to be known by a new surname or remove the child from the UK (save, in the case of the person who provides the child's home, for a period of less than one month) without the leave of the court or each parent's written consent (s 28). The application form for permission to change a child's surname is Form A55. The relevant form for permission to take a child out of the jurisdiction is Form A56.

Adoption orders

31. An adoption order is an order which gives parental responsibility for a child to the adopters and extinguishes the parental responsibility of the parents.

32. The 2002 Act for the first time recognises the status of a child of a step-parent/ partner relationship. The status of an adopted person includes being treated in law as if born as a child of the adopter(s) and as the child of the relationship of the couple or one of the couple, where adopted by the partner of a parent: s 67.

Requirements for obtaining an adoption order

33. The primary ground for the making of an adoption order is that such an order is justified in all the circumstances, the paramount consideration being given to the child's welfare through the child's life under s 1 of the 2002 Act.

34. When an adoption application is made, the court may only make an order if each of the following requirements is satisfied:

(i) An application for adoption may be made by a 'couple' or 'one person': s 49.

● A couple means 'a married couple or two people (whether of different sexes or the same sex) living as partners in an enduring family relationship'. It includes two people who are civil partners of each other.

● A step-parent or partner is now eligible to adopt as a single applicant: s 51(2).

(ii) Each applicant must have attained the age of 21 unless one of the couple is either the mother or father of the child in which case that person need only have attained the age of 18: s 50.

(iii) At least one of the couple or the single applicant must be domiciled in part

of the British Islands or both of the couple have been or the single applicant has been habitually resident in part of the British Islands for a period of not less than one year ending with the date of the application: s 49.

(iv) The child to be adopted must not have attained the age of 18 on the date of the application, but an adoption order may be made at any time before the child reaches the age of 19 years. An order can be made with respect to an adopted child but not a child who is or has been married: ss 47 and 49.

(v) The child must have had the child's home with the applicant(s) at all times during the relevant period preceding the application: s 42.

- *Ten weeks* where the child was placed for adoption with the applicants either by an adoption agency or the applicant is the parent of the child

- *Six months* where the applicant or one of the applicants is the partner of a parent of the child

- *One year* (unless the court gives leave for an earlier application), where the applicants are local authority foster parents

- Not less than *three years* (whether continuous or not) *during the period of five years* (unless the court gives leave for an earlier application), in any other case.

(vi) The adoption agency has had sufficient time to see the child with the applicant(s): s 42(7).

(vii) Where an application relates to a child placed for adoption by an adoption agency, a report on the suitability of the applicants must be submitted by the agency, in which there must be proper regard for the need for stability and permanence in their relationship: ss 43 and 45.

(viii) In a non-agency placement, the provisions regarding notice must be satisfied: s 44. Notice must be given not more than two years or less than three months before the date on which the application for adoption is made.

(ix) No previous application for a British adoption order has been made by the same applicants in relation to the same child unless it appears to the court that either because of the change of circumstances or for any other reason it is proper to hear the application: s 48.

(x) There has been no contravention by the applicant of the provisions relating to illegal transactions: ss 92-96, 123.

(xi) The requirements regarding parental consent are satisfied: s 47 (see *Conditions for making an adoption order* below).

(xii) The court must consider any arrangement for post-adoption contact: s 46(6). At the final adoption hearing the court may make a contact order under s 8 of the Children Act 1989.

Conditions for making an adoption order

35. One of the following three conditions must be met before an adoption order can be made: ss 47 (2), (4) and (6).

36. *First*, the court must be satisfied that

(i) Each parent consents to the making of an adoption order, or

(ii) Each parent has given advance consent (and has not withdrawn consent) and does not oppose the making of an adoption order, or

(iii) Each parent's consent should be dispensed with.

37. Where a parent has given advance consent to the making of an adoption order, he may not oppose the making of the adoption order without the court's

leave, which cannot be given unless the court is satisfied that there has been a change of circumstances since the consent was given.

38. The court cannot dispense with the consent of any parent to the making of the adoption order unless either of the two grounds under s 52(1) is satisfied (paragraph 18 above).

39. *Secondly,*

- (i) The child has been placed for adoption by the agency with the prospective adopters in whose favour the order is proposed to be made, and,
- (ii) Either (a) the child was placed with the consent of each parent and the consent of the mother was given when the child was at least six weeks old, or (b) the child was placed for adoption under a placement order, and
- (iii) No parent or guardian opposes the making of the adoption order.

40. A parent may not oppose the making of an adoption order without the court's leave, which cannot be given unless the court is satisfied that there has been a change of circumstances since the placement order was made.

41. *Thirdly,* the child is free for adoption by virtue of an order made in Scotland or in Northern Ireland. Nothing in the 2002 Act affects any freeing order made under the Adoption Act 1976.

Procedure

42. The Family Procedure (Adoption) Rules 2005 apply to proceedings in all three court tiers: High Court, county court and magistrates' court. Certain county courts are designated as adoption centres and applications for an adoption order to a county court must be commenced in such a centre.

43. The 2005 Rules, Part 5 apply to applications for adoption orders. The overriding objective in rule 1 applies to adoption order applications (see paragraph 50 below). The relevant form is Form A58. A report on the health of each applicant and of the child must be attached to the application, except where (a) the child was placed with the applicant(s) by an adoption agency or (b) the applicant or one of the applicants is a parent of the child or (c) the applicant is the partner of a parent of the child (rule 30). Health reports must cover the matters set out in the Practice Direction *Reports by a Registered Medical Practitioner*. The Respondents to the application are set out in rule 23. Proceedings are started when the court officer issues the application at the request of the applicant (rule 19).

44. Any consent to the making of an adoption order may be given in Form A104 or a form to the like effect (rule 28).

45. If the proposed applicant for an adoption order wishes his identity to be kept confidential in the proceedings, he may, before the commencement of proceedings, request the court officer to assign a serial number to him (rule 20).

Once assigned:

- (i) The court officer will ensure that any application form or notice sent out does not contain the identity of that person to any other party who is not aware of his identity;

(ii) The proceedings will be conducted with a view to securing that the applicant is not seen by or made known to any party except with his consent.

46. As soon as practicable after the application has been issued, the steps set out in paragraphs 21, 23 to 24 (above) will be taken. In addition, after the application has been issued, the court officer will send a copy of the entry in the register of live births or Adopted Children Register and any health report to any CAF/CASS officer or Welsh family proceedings officer and the local authority (to whom notice of intention to adopt has been given).

47. Additionally, in the case of an adoption order, as soon as practicable after issue, the court or court officer will (rule 24):

(i) Where the child is not placed for adoption by an adoption agency:

- Ask either the CAF/CASS officer or the Welsh family proceedings officer to file any relevant form of consent to an adoption order, and
- Ask the local authority to prepare a report on the suitability of the prospective adopters (which must cover the matters specified in the Practice Direction *Reports by the Adoption Agency or Local Authority*).

(ii) Where the child is placed for adoption by an adoption agency, ask the agency to:

- File any relevant form of consent to the child being placed for adoption (Forms A100-102), an adoption order (Form A104) and a future adoption order (Form A103) or using forms to the like effect.
- Confirm whether a statement has been made by a person giving advance consent that he does not wish to be informed of any application for an adoption order and, if so, file that statement (s 20(4)(a))
- File any statement made by a person giving advance consent withdrawing the statement referred to above (s 20(4)(b))
- Prepare a report on the suitability of the prospective adopters (which must cover the matters specified in the Practice Direction *Reports by the Adoption Agency or Local Authority*).

48. Any person who has notice of the date and place where the application will be heard and of the fact that they need not attend (unless the person wishes or the court requires) by virtue of s 141 (3) and (4) may attend the final hearing and be heard on the question whether an order should be made (save for a person whose application for permission to oppose the making of an adoption order has been refused) (rules 31 and 32).

49. The court cannot make an adoption order unless the applicant and child attend the final hearing (unless the court directs otherwise) (rule 32).

The overriding objective

50. Rule 1 of the Family Procedure (Adoption) Rules 2005 sets out the overriding objective, which it is the court's duty to achieve in respect of all proceedings under the 2002 Act. That objective is 'to enable the court to deal with cases justly, having regard to the welfare issues involved.'

51. 'Dealing with a case justly' includes, so far as is practicable:

- (i) Ensuring that it is dealt with expeditiously and fairly;
- (ii) Dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (iii) Ensuring that the parties are on an equal footing;
- (iv) Saving expense;
- (v) Allotting to it an appropriate share of the court's resources, whilst taking into account the need to allot resources to other cases.

52. The duty is on the court to further the overriding objective by actively managing cases. Active case management includes the exercise of powers as listed in rule 4(2).

Rt. Hon. Sir Mark Potter
President of the Family Division
Head of Family Justice

Website sources

Adoption and Children Act 2002

www.opsi.gov.uk/acts/acts2002/20020038.htm

Family Procedure (Adoption) Rules 2005 (SI 2005, No 2795)

www.opsi.gov.uk/si/si2005/200527295.htm

www.dca.gov.uk/family/procrules

[www.dfes.gov.uk/adoption /lawandguidance](http://www.dfes.gov.uk/adoption/lawandguidance)