

These notes refer to the Adoption and Children Act (Northern Ireland) 2022 (c.18) which received Royal Assent on 27 April 2022

Adoption and Children Act (Northern Ireland) 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Adoption

Chapter 3 - Placement for Adoption and Adoption Orders

Section 51: Parental etc. consent

Section 51 applies generally to placement and adoption and covers the giving and withdrawal of consent to placement for adoption or to adoption, including advance consent to adoption (*subsection (2)*).

Dispensing with a parent or guardian's consent is relevant in relation to the making of placement orders and adoption orders. *Subsection (1)* provides that the court cannot dispense with the consent of any parent or guardian to a child being placed for adoption or to the making of an adoption order in respect of the child unless it is satisfied that the parent or guardian cannot be found or is incapable of giving consent or that the welfare of the child requires parental consent to be dispensed with. Section 1 applies to a decision about whether or not to dispense with the consent of a parent or guardian to a placement order or an adoption order. The child's interests are the paramount consideration and the welfare checklist in section 1(4) recognises the importance of the child's relationship with his or her parents and their ability and willingness to provide the child with a secure home and otherwise to meet their needs.

Any consent given by the mother of a child to the making of an adoption order is ineffective if it is given less than 6 weeks after the child's birth (*subsection (3)*).

Subsection (4) provides that once an application for an adoption order has been made, any consent that has been given to placement for adoption or consent to final adoption may not be withdrawn. If the parent wishes to oppose the adoption order in these circumstances they must seek the court's leave under section 44(3) or (5).

Subsection (5) defines what is meant by "consent". Consent means consent which is given unconditionally and with full understanding of what is involved. A person may give consent to adoption without knowing the identity of the

person(s) in whose favour the adoption order will be made. Court rules are to prescribe the form in which consent to placement for adoption under section 16 and advance consent to adoption under section 17 must be given. Rules may also prescribe a form of consent that may be used in other circumstances (*subsection (7)*). Withdrawal of those consents must be in the prescribed form or by notice in writing given to the adoption agency (*subsection (8)*).

Subsections (9) and (10) deal with the situation where an unmarried mother gives consent to placement under section 16 and subsequently the child's father acquires parental responsibility for the child, either by marriage or a parental responsibility agreement or order under the Children Order. Under subsection (10), the father who later acquires parental responsibility is deemed to have consented on the same basis as the mother. Without this, authority for the placement would lapse immediately the father acquired parental responsibility. Following his acquisition of parental responsibility, and regardless of subsection (10), the father would be able to withdraw consent in the case of a placement for adoption, which is the same position the mother is in. Where the mother has given advance consent to adoption, the father would be given notice of the application for an adoption order and would be able to oppose, with the leave of the court, the making of the order.