

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

In this Act, Freeing Orders as provided for in Articles 17 & 18 of the Adoption (Northern Ireland) Order 1987 are replaced with a new pre-adoption order, a 'placement order'. This order retains the successful aspects of freeing but provides a more effective balance of the competing interests in the adoption process, primarily establishing a clearer focus on the child's welfare as paramount and the rights of the child.

Sections 15 to 26 introduce new provisions for the placement of children for adoption. An adoption agency may (except in the case of a child who is less than 6 weeks old) only place a child for adoption with the consent of the parent or guardian (referred to in these notes as the 'parent') under section 16 or under an order made by the court authorising an adoption authority to place a child with any prospective adopters chosen by them ("a placement order"- see section 18). Adoption authorities are not required to have identified a potential placement to obtain the order. Provision is made for who is to have parental responsibility for the child and the other consequences of placement with consent and placement orders.

The intention is to ensure key decisions are taken earlier in the adoption process than at present, with court involvement where necessary. This is intended to provide greater certainty and stability for children by dealing with consent to placement for adoption before they have been placed (at present this issue is often not addressed until the final adoption order hearing); to minimise the uncertainty for prospective adopters who, under the current system, possibly face a contested court hearing at the adoption order stage; and to reduce the extent to which birth families are presented with a 'fait accompli' at the final adoption hearing (as they may be under the current system, where their child has not been freed for adoption but has been placed with an adoptive family for some time before the application for an adoption order is made).

Section 15: Placement for adoption by agencies

Subsection (1) provides that an adoption agency (except in the case of a child who is less than 6 weeks old) may only place a child for adoption with prospective adopters where the parent of the child has consented to the placement or, in the case of an adoption authority, where it has obtained a placement order. *Subsection (2)* provides that an adoption agency may not place a child for adoption with prospective adopters unless the agency is satisfied that the child ought to be placed for adoption. Where a child is placed or authorised to be placed for adoption by an adoption authority, the child is a looked after child for the purposes of the Children Order (*subsection (3)*).

An adoption agency may place a child who is less than 6 weeks old ("baby placement") for adoption with the voluntary agreement of the parent or guardian. Regulations made under section 9 will set out the process for obtaining this agreement. *Subsection (3)* applies to any such child placed by an adoption authority. When the child reaches the age of 6 weeks and adoption remains the plan, the adoption agency should obtain the consent of the parent or a placement order.

Subsection (4) provides that an adoption agency may not place a child for adoption where an application for an adoption order for that child has been made and has not been disposed of. Where the agency has already placed the child with the applicants, it may keep the child with them until the application is disposed of, but apart from that, the adoption agency may not place the child with any other prospective adopters.

Under *subsection (5)*, placement has been given an extended meaning covering both placing a child with prospective adopters and, where the child is already placed with people for other purposes (for example with foster carers), keeping the child with them as approved prospective adopters. This is intended to reflect circumstances where a child is in a foster care placement with carers who have been dually approved as both foster carers and prospective adopters to minimise the number of moves the child may have to make. It will also be open to authority foster parents to seek formal approval as prospective adopters in respect of a child being fostered by them. If they are approved as prospective adopters and the agency keeps the child with them as prospective adopters, the placement will be an agency placement and there will be no need for them to give formal notice of intention to adopt under section 41. If the adoption agency does not approve them as prospective adopters, authority foster carers can independently give notice of intention to apply to adopt the child as a non-agency case, providing the condition in section 39(4) is met i.e. that the child has had his home with the applicants at all times during the period of one year preceding the application.

Under *subsection (6)* references in Chapter 3 to an adoption agency being, or not being, authorised to place a child for adoption are to the agency being, or not being, authorised to do so under section 16 (placing children with parental consent) or a placement order. This means that, where a child who is less than

6 weeks old is placed for adoption, section 22 (Parental Responsibility), for example, will not apply.

Section 16: Placing children with parental consent

Section 16 makes provision for placing children with parental consent. It allows an adoption agency to place a child for adoption where it is satisfied each parent or guardian has given consent to placement and that consent has not been withdrawn. Placement with consent may be with prospective adopters identified in the consent or with any prospective adopters who may be chosen by the agency (*subsection (1)*). Consent to placement with prospective adopters identified in the consent may be combined with consent to the child being subsequently 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 (*subsection (2)*). Consent can be withdrawn at any point before an application for the adoption order is made.

Subsection (3) provides that where an application has been made on which a care order under the Children Order might be made and that application is pending, the provisions relating to placement of children with parental consent do not apply. Where an adoption authority is satisfied such a child should be adopted, it must apply for a placement order under section 19(2). Where a child is placed for adoption with consent and a care order or a placement order is subsequently made in respect of the child, the authority to place for adoption provided as a result of the earlier section 16 consent no longer applies. Where a child is placed for adoption with consent and a special guardianship order is subsequently made in respect of the child, the authority to place no longer applies unless the special guardian consents, as their consent is required under section 16(1). Where a child is placed with prospective adopters and consent is then withdrawn, the child continues to be treated as placed for adoption until the child is returned to the parents or any placement order application is determined (*subsection (4)*). Section 16 is subject to the provisions in section 51 relating to what is meant by consent. Consent must be given in a form prescribed for in court rules.

Section 17: Advance consent to adoption

Section 17 enables a parent who consents to their child being placed for adoption by an adoption agency to give consent at the same time to the making of a future adoption order ('advance consent'). As with placement with consent, advance consent may be to adoption by prospective adopters identified in the consent or by any prospective adopters who may be chosen by the agency (*subsection (2)*). *Subsection (3)* provides that consent may be withdrawn. It must be withdrawn by notice in writing to the agency or in the form prescribed (see section 51(8)). *Subsection (4)* enables a parent who gives advance consent to adoption to give notice to the agency that they do not wish to be informed when an application for an adoption order is made, and to withdraw any such notice. This provision allows a parent who wishes to relinquish their child for adoption to do so, and to provide that they need have no further involvement in the adoption proceedings.

Subsection (6) provides that section 17 is subject to the provisions in section 51 relating to what is meant by consent.

Section 18: Placement orders

Section 18 defines a placement order. It is an order made by the court authorising an adoption authority to place a child for adoption with any prospective adopters who may be chosen by the authority (*subsection (1)*). Only an adoption authority is able to apply for a placement order. *Subsection (2)* provides that the court may not make a placement order unless the child is already subject to a care order or it has the power to make a care order under Article 50(2) of the Children Order. In order to be able to make a care order (and therefore a placement order) the court must first be satisfied that the child concerned is suffering, or is likely to suffer, significant harm, and that this is attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him, or the child is beyond parental control. The only exception to this is where the child has no parent or guardian. In these cases, the 'significant harm' threshold in Article 50(2) of the Children Order does not apply. This is to allow an authority to place orphaned children for adoption.

Linking the making of placement orders to these provisions in the Children Order is intended to deliver on the 'Adopting the Future' proposal to align adoption law with the Children Order. The same threshold for compulsory intervention in family life is to apply where an adoption authority seeks authority to place a child for adoption without parental consent as applies where an authority seeks to take a child into care under a care order. In placement order cases, where the court is satisfied that the 'significant harm' threshold is met, it will then consider whether a placement order should be made. The section 1 provisions will apply: the child's welfare will be the paramount consideration; the court will apply the welfare checklist set out in section 1(4); the court will have to consider its full range of powers; and will only make the order if it is better for the child than not to do so.

Subsection (3) provides that the court may only make a placement order if it is satisfied that the parent has consented to the child being placed for adoption with any prospective adopters who may be chosen by the agency and has not withdrawn that consent or that the parent's consent should be dispensed with. The grounds for dispensing with consent are set out in section 51(1). A placement order will continue in force until it is revoked, an adoption order is made in respect of the child or the child marries, forms a civil partnership or reaches the age of 18 (*subsection (5)*).

Section 19: Applications for placement orders

Section 19 sets out when an adoption authority must apply for a placement order. An adoption authority must apply for a placement order when the child is placed for adoption or is accommodated by an adoption authority; they are satisfied that the child ought to be placed for adoption; no adoption agency is authorised

to place the child for adoption; and either the child has no parent or guardian or the authority consider the threshold criteria in section 50(2) of the Children Order are met (*subsection (1)*). This might occur for example where the parent has withdrawn consent to placement for adoption but the authority remains of the view the child should be adopted.

Where an application is pending on which a care order under the Children Order might be made, or the child is subject to a care order but the parent does not consent to the placement of a child for adoption, and the authority is satisfied that the child should be placed for adoption, it must apply to the court for a placement order (*subsection (2)*). If the child is subject to a care order and the parent or guardian is prepared to consent to the placement of the child for adoption, an authority has the discretion as to whether to apply for a placement order (*subsection (3)*). Alternatively, it could decide to place the child with parental consent under section 16.

Subsection (4) provides that where an adoption authority is under a duty to apply for a placement order or an application for a placement order is pending, or has applied for a placement order and the application has not been disposed of, the child is a looked after child for the purposes of the Children Order until the application is determined. If a placement order is made, the child continues to count as looked after by virtue of section 15(3). *Subsection (5)* provides that subsections (1) to (3) do not apply if any persons have given notice of intention to adopt, unless they have not applied for an adoption order within four months of giving such notice; their application for such an order has been withdrawn or refused; or an application for an adoption order has been made and has not been disposed of.

Subsection (6) enables the court, where the application for a placement order is pending and no interim care order has been made, to give directions for the child to undergo medical, psychiatric or other assessment.

The application for a placement order is to be made by the appropriate authority as defined in *subsection (7)*.

Section 20: Varying placement orders

Section 20 provides that the court can vary a placement order to substitute another adoption authority for the adoption authority authorised to place the child for adoption but the application has to be made by both authorities.

Section 21: Revoking placement orders

Section 21 makes provision for the revocation of placement orders. *Subsection (1)* provides that a court may, on the application of any person, revoke a placement order. A person, other than the child or the adoption authority authorised by the placement order to place the child for adoption, may only make such an application if the court has given leave to apply and the child is not yet placed for adoption by the adoption authority (*subsection (2)*). Leave

cannot be given by the court unless it is satisfied that there has been change in circumstances since the order was made (*subsection (3)*).

Subsection (4) provides that a court may revoke a placement order if, at the final adoption order hearing, it decides not to make an adoption order in respect of the child. It may be that the court decides not to make the adoption order because it considers that the child should not be placed for adoption, in which case it may revoke the placement order. Alternatively, if the court considers that the child should still be placed for adoption with a view to being adopted at a future date, it may decide that the placement order shall continue.

Subsection (5) provides that where an application for a revocation of a placement order has been made and has not been disposed of and the child is not placed for adoption, the leave of the court is required before the child can be placed for adoption under the placement order.

Section 22: Parental responsibility

Section 22 makes provision for who is to have parental responsibility where a child is placed for adoption under section 16 (placement with consent) or an adoption agency is authorised to place a child for adoption under that section, or where a placement order is in force. Once consent to placement under section 16 is given, or a placement order is made, the adoption agency has parental responsibility for the child (*subsection (2)*) and while a child is placed with prospective adopters, parental responsibility is given to them (*subsection (3)*). The child's parents retain parental responsibility throughout the process, up to the point at which an adoption order is made. Under *subsection (4)* the agency may determine the extent to which the parental responsibility of any parent or guardian or of prospective adopters is to be restricted.

Section 23: Contact

Sections 23 and 24 make provision for applications for contact in respect of children placed for adoption and where an adoption agency is authorised to place a child for adoption under section 16 or under a placement order. *Subsection (1)* of section 23 provides that where an adoption agency is authorised to place a child for adoption, or a child who is less than 6 weeks old is placed for adoption, any provision for contact under Article 8 or Article 53 (parental contact with children in care) of the Children Order ceases to have effect, as the arrangements set out in previous contact orders may no longer be appropriate. The objective should be to agree whatever new arrangements for contact are appropriate given the adoptive placement. However, if agreement cannot be reached, an application may be made to the court for an order for contact. Such an application may be made by the child or the adoption agency or the parent or other persons who are identified in *subsection (3)*.

On an application, the court may make an order requiring the person with whom the child lives or is to live to allow the child to visit or stay with the person named in the order or for that person and the child otherwise to have contact

with each other (*subsection (2)*). The court may also, on its own initiative, make an order under this section when making a placement order (*subsection (4)*).

Section 24: Contact: supplementary

Section 24 makes supplemental provision in relation to contact. *Subsection (1)* provides that an order under section 23 has effect while the adoption agency is authorised to place the child for adoption or while the child is placed for adoption. Only the child, the adoption agency or a person named in the order may apply to the court for the order to be varied or revoked.

There may be cases where it is inappropriate for contact to take place even though provided for under an order. *Subsection (2)* enables the adoption agency to refuse contact for a period of not more than 7 days if it is satisfied that it is appropriate to do so in order to safeguard the child's welfare. Regulations may set out the steps to be taken by an adoption agency which has exercised its power under subsection (2), the circumstances in which the terms of any order made under section 23 may be departed from, and the notification by an adoption agency of any variation or suspension of arrangements made with a view to allowing any person contact with the child (*subsection (3)*).

Subsection (4) imposes a duty on the court when making a placement order to consider the arrangements the agency has made or proposes to make in relation to contact and under *subsection (5)* the court may impose any conditions on a contact order made under section 23 as it thinks appropriate.

Section 25: Further consequences of placement

Section 25 makes further provision as to the consequences of placement. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under section 16 (placement with consent), a parent or guardian cannot apply for a residence order unless an application for a final adoption order has been made and the parent or guardian has obtained the leave of the court under section 44(3) or (5) to oppose the making of the adoption order (*subsection (1)(a)*). This is to allow competing applications for residence orders from parents at contested final adoption order hearings. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under section 16 and an application has been made for an adoption order, a guardian of the child may not apply for a special guardianship order unless the guardian has obtained the leave of the court under section 44(3) or (5) (*subsection (1)(b)*).

Subsections (2) to (4) provide that where an adoption agency is authorised to place a child for adoption (whether or not the child is placed) a person cannot remove him from the United Kingdom (whether or not the child is in Northern Ireland (*subsection (10)*)) except with the leave of the court or if each parent or guardian gives written consent. However this would not prevent the removal of the child from the United Kingdom for up to a month by a person who provides the child's home.

Subsection (5) provides that a child may not be known by a new surname, without the leave of the court, or each parent or guardian or the adoption agency giving written consent. If the adoption agency intends to give its authorisation, it can only do so if it has given at least 14 days' notice to every person with parental responsibility for the child, or the child itself if the agency feels the child has sufficient understanding (*subsection (6)*). *Subsection (5)* is subject to any direction of the court (*subsection (7)*). The court may vary or revoke such a direction at any time on the application of any person having parental responsibility for the child; the adoption agency; or the child, if the court feels that the child has sufficient understanding (*subsection (8)(a)*). The court may also make, vary or revoke such a direction in any family proceedings in which a question arises in relation to the welfare of the child and the court considers that the direction should be given even though no such application has been made (*subsection (8)(b)*). *Subsection (9)* provides that "family proceedings" has the same meaning as in the Children Order.

Section 26: Further consequences of placement orders

Section 26 makes further provision in relation to placement orders. Where a placement order is made in respect of a child and either the child is subject to a care order or the court makes a care order in the same proceedings, the care order ceases to have effect during the period when the placement order is in force (*subsection (1)*). On the making of a placement order, any order mentioned in Article 8(1) of the Children Order (for example, a residence order) and any supervision order ceases to have effect (*subsection (2)*). Furthermore, where a placement order is in force, a prohibited steps order, specific issue order, residence order, supervision order or child assessment order cannot be made in respect of the child (*subsection (3)*).

Subsection (4) provides that, where a placement order is in force and an application for a final adoption order has been made, a parent or guardian may make a competing application for a residence order providing they have the leave of the court to oppose the making of the final adoption order under section 44(3) or (5). Once an application for a final adoption order has been made, anyone else who is entitled to do so may make a competing application for a residence order, with the leave of the court.

Subsection (5) provides that, where a placement order is in force, no special guardianship order may be made in respect of the child. However, once an application for a final adoption order has been made in respect of the child, a person entitled to do so may make a competing application for a special guardianship order with the leave of the court.

Removal provisions

Sections 27 to 32 make provision in relation to the removal of children who are or may be placed for adoption by adoption agencies, to ensure that they are only removed from placements by authorised people in the appropriate manner. These sections apply whether or not the child in question is in Northern Ireland.

Section 27: General prohibitions on removal

Section 27 imposes general prohibitions on removal and is subject to sections 28 to 30. Under *subsection (1)(a)*, where a child is placed with prospective adopters under section 16, it is an offence for a person other than the adoption agency to remove the child from that placement (*subsections (1) and (8)*). Under *subsection (1)(b)*, where a child is placed for adoption and either the child is less than 6 weeks old or the agency has not been authorised to place the child for adoption, the same offence applies. This ensures that where a child is placed with the mother's consent while under 6 weeks of age, but the agency is later unable to secure the mother's consent under section 16, the restrictions on removal would continue to apply to the placement. *Subsection (1)* applies even if the parent has withdrawn their consent to placement.

If a child is accommodated by an authority and it has applied for a placement order and the application has not been disposed of, the child may not be removed from the accommodation pending the determination of that application without the leave of the court (*section 27(2) and (8)*). Where an adoption agency is authorised to place a child for adoption but the child is not yet placed and is being provided with accommodation by an agency in, for example, a foster placement or a children's home, it is an offence for a person other than the agency to remove the child from that accommodation (*section 27(3) and (8)*). *Subsection (3)* applies if the parent or guardian has withdrawn consent to placement.

The general prohibitions on removal set out in this section are subject to the specific provisions made in sections 28 to 30 but those sections do not apply if the child is subject to a care order (*subsection (4)*). But the provisions in sections 27 to 30 covering prohibition on removal do not prevent the removal of a child who is arrested, or removal as a result of the exercise by an authority or other person of a power conferred by any enactment (excluding the right under Article 22(2) of the Children Order of a person who has parental responsibility for a child to remove a child voluntarily accommodated by an authority) (*subsections (6) and (7)*).

Subsection (8) provides that a person who removes a child in breach of *subsection (1), (2) or (3)* is liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

Section 28: Recovery by parent etc. where child not placed or is a baby

Section 28 applies where a child is not yet placed for adoption but is being provided with accommodation by an adoption agency and previous consent to placement under section 16(1) has been withdrawn, which must be done in writing to the agency on the form prescribed (*subsection (1)*). If a parent or guardian informs the agency that they wish the child to be returned, the agency must return the child to them within 14 days beginning with the date of request, unless an application is, or has been, made for a placement order and the application has not been disposed of (*subsection (2)*).

Where a child is placed for adoption and either the child is less than 6 weeks old or the agency has at no time been authorised to place the child and any parent or guardian informs the agency that they wish the child to be returned (*subsection (3)*), the agency must give notice to the prospective adopters who must return the child to the agency within the period of 7 days beginning with the day on which the notice is given unless an application is, or has been, made for a placement order and the application has not been disposed of (*subsection (4)*). In this circumstance, once the child is returned to the agency, the agency must then return the child to the parent or guardian in question within 7 days from the date of the child's return from the prospective adopters (*subsection (6)*).

Should a prospective adopter fail to comply with this provision they are guilty of an offence and are liable on summary conviction to a term of imprisonment not exceeding three months or a fine not exceeding level 5 on the standard scale, or both (*subsection (5)*).

Section 29: Recovery by parent etc. where child placed and consent withdrawn

Section 29 applies where a child is placed for adoption with prospective adopters under section 16, and the parent has withdrawn consent, unless an application for a placement order is, or has been made and the application is pending (*subsection (1)*).

If the parent informs the agency he wishes the child to be returned to him, the agency must give notice to the prospective adopters that the parent wishes the child to be returned to him and the prospective adopters have to return the child to the agency within 7 days of the notice being given to them (*subsection (2)*). If the prospective adopters do not return the child, they commit an offence and are liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both (*subsection (3)*). The agency must return the child to his or her parent within 7 days, beginning with the day the child is returned to the agency (*subsection (4)*).

If before notice of removal is given, an application for an adoption order in Northern Ireland (or in Great Britain) or for a residence order or special guardianship order, or for leave to apply for these orders in respect of the child has been made and that application has not been disposed of, the prospective adopters do not have to return the child unless the court makes an order to that effect (*subsection (5)*).

Section 30: Recovery by parent etc. where child placed and placement order refused

Section 30 applies where a child is placed for adoption under section 16, the adoption authority's application for a placement order has been refused and the parent wishes the child to be returned to him (*subsection (1)*). The prospective adopters must return the child to the adoption authority on the date set by the court (*subsection (2)*). Should the prospective adopters fail to do this, they

commit an offence and are liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both (*subsection (3)*). The adoption authority must return the child to his or her parent or guardian within 7 days beginning with the day on which the child is returned to it (*subsection (4)*).

Section 31: Placement orders: prohibition on removal

Section 31 applies where a placement order is in force or has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by an adoption authority (*subsection (1)*). It is an offence, punishable as set out in *subsection (5)*, for a person (other than the adoption authority) to remove the child from the prospective adopters or accommodation provided by the authority.

Where a placement order has been revoked, it will be for the court, when they revoke the order, to determine whether the child is to remain with the prospective adopters or be returned to the adoption authority or parent or guardian. If the court determines the child should not remain with the former prospective adopters, they must return the child to the adoption authority within a period determined by the court, otherwise they commit an offence (*subsection (3)*). If the court determines that the child should return to the parent or guardian, the adoption authority must secure the child's return to the parent or guardian within 7 days from the day the child is returned to the authority, or where the child is in accommodation provided by an authority, within 7 days from the day on which the revocation of the placement order comes into force (*subsection (4)*). This section does not prevent the removal of a child who is arrested (*subsection (7)*) and *subsection (8)* provides that section 31 applies whether or not the child in question is in Northern Ireland.

Section 32: Return of child in other cases

Section 32 applies in cases where the prospective adopters want to return the child or the adoption agency has decided that the child should not remain with the prospective adopters. In the first case, the prospective adopters must give notice to the agency that they want to return the child and the agency has to collect the child (*subsection (1)*). The agency must also notify the child's parent or guardian so they may consider their position. The provision requires that the agency must receive the child from the prospective adopters before the end of a period of seven days beginning with the giving of notice. In the second case, the agency must give notice to the prospective adopters that it does not want the child to remain with them and the prospective adopters must return the child within 7 days of the giving of notice (*subsection (2)*). Again, the agency must inform the child's parent or guardian (*subsection (3)*). If the prospective adopters fail to return the child within 7 days of the giving of notice, they commit an offence and are liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding level 5 of the standard scale, or both (*subsection (4)*).

If a notice of removal is given under subsection (2), an application was made for an adoption order, residence order or special guardianship order, or for leave to apply for these orders in respect of the child, and that application has not been disposed of, the prospective adopters do not have to return the child unless the court makes an order to that effect (*subsection (5)*).

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

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

Sections 33 to 37: Removal of children in non-agency cases

These sections cover restrictions on the removal of the child in non-agency cases, i.e. where the child has not been placed for adoption by an adoption agency. These include adoptions by the partner of a parent, cases where authority foster parents wish to adopt a child placed with them, and adoptions by relatives and private foster parents.

Section 33: Restrictions on removal

Section 33 provides that where an application for an adoption order has been made, notice of intention to apply to adopt has been given (as required under section 41), or the court's leave sought to make an application (under section 39(6)), a child may only be removed in accordance with the provisions detailed in sections 33 to 37 (*subsection (1)*). None of the restrictions prevent removal in the case of the child being arrested (*subsection (4)*).

Where leave to apply to adopt has been granted, the restrictions on removal extend for 3 days to allow notice of intention to be given (*subsection (3)*). In the case of notice of intention to adopt, the restrictions on removal apply for 4 months (under section 41 there must be a minimum of 3 months between the giving of notice and an application to adopt), but a second notice given within 5 months of the first notice will not trigger protection (*subsection (2)*). This is to prevent the giving of repeated notices of intention to adopt as a means of preventing removal of the child.

Where a parent or guardian may remove their child in accordance with section 33, the persons with whom the child has their home must return the child to the parent or guardian at once (*subsection (5)*). A person who fails to comply with this provision or removes a child in breach of section 33 is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both (*subsection (6)*).

This group of sections applies whether or not the child in question is in Northern Ireland (*subsection (7)*) and references to a child placed by an adoption agency includes a child placed by an adoption agency in England, Wales and Scotland.

Section 34: Applications for adoption

Section 34 provides that where an application for an adoption order has been made and the application has not been disposed of, the child may only be removed by a person who has the leave of the court, or by an adoption authority or other person in exercise of a power conferred by any statutory provision (for example, for child protection purposes under the Children Order). Once an application for an adoption order has been made in respect of a child voluntarily accommodated under Article 21 of the Children Order, the provision in Article 22(2) of that Order allowing any person who has parental responsibility to remove the child at any time does not apply.

Section 35: Authority foster parents

Where an authority foster parent has given notice of intention to adopt, which they may do once the child has lived with them for one year, then the child may only be removed with the leave of the court, by an adoption authority or other person in exercise of a power conferred by any statutory provision or, if the child is voluntarily accommodated under Article 21 of the Children Order, by a person who has parental responsibility for the child (*subsection (5)*). However, where the child has been with the authority foster parent for 5 years or more or an application for leave to make an application to adopt has been made but not disposed of, the right of a person with parental responsibility for the child under Article 22(2) of the Children Order to remove a child does not apply (*subsections (2) and (3)*).

Section 36: Partners of parents

Where a partner of a parent has given notice of intention to apply to adopt, the child may only be removed with the leave of the court or by an adoption authority or person in exercise of the power conferred by any statutory provision (other than Article 22(2) of the Children Order), or by a parent or guardian of the child (unless the child has lived with the partner of the parent for 3 out of the last 5 years, in which case a parent may not remove the child). A definition of “partner of a child’s parent” is given in section 159(6).

Section 37: Other non-agency cases

In these cases, where notice of intention to adopt has been given or leave has been applied for under section 39(6) and the application has not been disposed of, the child may only be removed with the leave of the court or by an adoption authority or other person acting in exercise of a power conferred by any statutory provision other than Article 22(2) of the Children Order.

Section 38: Recovery orders

Section 38 makes provision for what is to happen where a child is removed, or there are reasonable grounds for believing that a person intends to remove a child, or a child is withheld and not returned, in breach of any of the preceding

provisions of Chapter 3 (that is, sections 15 to 37). It also applies where a person has failed to comply with sections 28(4), 29(2), 30(2), 31(3) or 32(2).

In those circumstances an application may be made to the court and the court may by order –direct any person who is in a position to do so to produce the child,

- authorise the removal of the child by an authorised person,
- require anyone who has information as to the child's whereabouts to disclose that information to a constable or officer of the court, or
- authorise a constable to enter any premises specified in the order (if there are reasonable grounds for believing the child is there) and search for the child, using reasonable force if necessary.

Authorised persons are any person named by the court, any constable, or any person who is authorised to exercise any power under the order by an adoption agency which is authorised to place the child for adoption (*subsections (2) to (4)*).

If a person intentionally obstructs an authorised person exercising the power of removal that person commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (*subsection (5)*).

A person who is required to disclose information must disclose that information even though it might amount to evidence that they had committed an offence (*subsection (6)*). However, in any criminal proceedings in which the person is charged with an offence (except one which is excluded in *subsection (8)*, that is, offences under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979) the prosecution cannot adduce evidence relating to the information provided or ask questions about it, unless it is raised by or on behalf of that person (*subsection (7)*).

Section 39: Child to live with adopters before application

Section 39 sets out the period a child must live with the applicants before they can apply for an adoption order. Where the child is placed for adoption by an adoption agency (or pursuant to an order of the High Court, or being adopted by their natural parent) an application for an adoption order may not be made unless the child has had their home with one or both of the applicants at all times in the 10 weeks before the application is made (*subsection (2)*).

For adoptions by a partner of a parent, the child is required to have had their home with the applicant or applicants at all times during the period of one year preceding the application (*subsection (3)*). The period is also one year in the case of non-agency applications by authority foster parents and 3 out of the last 5 years in any other non-agency cases, unless the court gives leave for an earlier application (*subsections (4) to (6)*).

Subsection (7) provides that the court may not make an adoption order unless it is satisfied the adoption agency, including a Great Britain agency, or an adoption authority within whose area the child lives in non-agency cases, has had sufficient opportunities to see the child with the applicants in their home.

Section 40: Reports where child placed by agency

This section provides that the adoption agency which places the child for adoption is responsible for submitting to the court a report on the suitability of the applicants and any other matters relevant to the operation of section 1 and for assisting the court as it may direct. The report should in particular address the matters in the welfare checklist (*subsection (1)*). *Subsection (2)* provides that an adoption agency may make arrangements for such functions to be discharged by another adoption agency.

Section 41: Notice of intention to adopt

Section 41 applies where persons wish to adopt a child who is not placed for adoption with them by an adoption agency. Section 41 provides that an adoption order may not be made in respect of a child in a non-agency case unless the proposed adopters have given notice of intention to adopt to the appropriate adoption authority (*subsection (2)*). The notice must be given not more than two years or less than three months before the application is made for the adoption order (*subsection (3)*). The 'appropriate adoption authority' is defined in *subsection (9)*. Where the adoption authority receives a notice of intention to adopt they must investigate (or make arrangements for this to be done by another adoption agency) and are responsible for preparing a report for the court which includes the suitability of the proposed adopters and any other matters relevant to the operation of section 1 (*subsections (5) and (6)*). Where a person needs leave to apply for an adoption order under section 39(4) and (5) they cannot give notice of intention to adopt unless they have the court's leave to make the adoption application (*subsection (4)*).

If an adoption authority receives notice of intention to adopt a child whom it knows was, at any time before the notice was given, looked after by another adoption authority it must, within 7 days of receipt of the notice, inform the other adoption authority in writing that it has received the notice (*subsection (7)*).

Subsection (8) provides that where an adoption authority has placed a child with any persons otherwise than as prospective adopters and those persons give notice of intention to adopt, the adoption authority is not to be treated as keeping the child with them as prospective adopters for the purposes of section 15(1)(b).

Section 42: Suitability of adopters

Section 42 amplifies the power in section 9 in relation to determining the suitability of adopters.

Subsection (1) enables the Department to make regulations prescribing the matters to be taken into account by an adoption agency in determining the

suitability of any persons to adopt a child, or in making any report in respect of the suitability of such persons. The regulations may in particular make provision for ensuring that adoption agencies, in determining the suitability of a couple to adopt, give proper regard to the need for stability and permanence in their relationship (*subsection (2)*). A definition of “couple” is given in section 159(3).

Section 43: Adoption orders

Section 43 explains the effect of an adoption order. An adoption order made by the court on an application under section 47 or 48 gives parental responsibility for a child to the adopters or adopter. It extinguishes the birth parent's parental responsibility, any order under the Children Order (which includes residence orders), any order under the Children Act 1989 or the Children (Scotland) Act 1995 (other than an excepted order) and any duty in an agreement or an order of a court to make maintenance payments (*subsection (2)*). The two types of orders under the Children (Scotland) Act 1995 which would remain in force once an adoption order has been made are orders concerning property and exclusion orders which bar a parent from the family home because of the risk he or she poses to the child. Once an adoption order is made, any liabilities of the birth parent under the Child Support (Northern Ireland) Order 1991 will cease to have effect. A parent for the purposes of that Order is defined as any person who is in law the mother or father of the child (see Article 2 of that Order). Once a child is adopted, the birth parent ceases to be the parent of the child and the adoptive parents become the parents of the child for the purposes of that Order. Therefore, on adoption, any existing maintenance assessment will cease to have effect and a court order (if any) for the child's maintenance will cease by virtue of section 43(2)(e). However subsection (2)(e) does not apply to a duty arising by virtue of an agreement which constitutes a trust, or expressly provides that the duty is not to be extinguished by the making of an adoption order (*subsection (4)*).

An adoption by a partner of a parent of the adopted child does not affect the parental responsibility of the parent of the adopted child or any duties of that parent (*subsection (3)*). *Subsection (5)* provides that an adoption order may be made even if the child to be adopted is already an adopted child.

Subsection (6) provides that before making an adoption order the court must consider whether there should be arrangements for allowing any person contact with the child. In this respect it may consider any existing or proposed arrangements, and obtain any views of the parties to the proceedings.

Section 44: Conditions for making adoption orders

Section 44 sets out the conditions which must be satisfied before an adoption order can be made where a child has a parent or guardian. One of three conditions must be satisfied. The first condition is that the court is satisfied that each parent or guardian consents to the making of the adoption order or has given advance consent to the making of the adoption order under section 17 (and has not withdrawn that consent) and does not oppose the making of an adoption order or

that the parent's or guardian's consent should be dispensed with (*subsection (2)*). Where the parent has given advance consent to the adoption under section 17, he or she may only oppose the making of the adoption order with the leave of the court (*subsection (3)*). This provision includes a parent or guardian who has consented under section 17 (advanced consent to adoption) or section 20 of the Adoption and Children Act 2002 or section 31(2) of the Adoption and Children (Scotland) Act 2007 regarding consent.

The second condition is that the child has been placed for adoption by an adoption agency with the prospective adopters who are applying for the order and either 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 6 weeks old or under a placement order and no parent or guardian opposes the making of the adoption order (*subsection (4)*). A parent may not oppose the making of the adoption order under the second condition without the leave of the court (*subsection (5)*).

The third condition is that an adoption agency is authorised to place the child for adoption by virtue of section 19 of the Adoption and Children Act 2002, or is subject to a placement order under section 21 of that Act, or the child is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted (*subsection (6)*).

Subsection (7) provides that the court cannot give leave under subsection (3) or (5) for a parent or guardian to oppose the making of the adoption order unless it is satisfied that there has been a change in circumstances since the consent was given or the placement order was made. For example, in a case where a placement order was made on the grounds of the child's welfare because of parental drug or alcohol abuse, such a change in circumstances might include proven, sustained and successful rehabilitation. Where a mother consented to placement before her baby was 6 weeks old, and did not subsequently confirm that consent, she does not need the leave of the court to oppose the adoption order.

An adoption order may not be made in relation to a person who is, or has been, married or a civil partner, or who has attained the age of 19 (*subsection (8)*).

Section 45: Restrictions on making adoption orders

Section 45 provides that a court may not hear an application for an adoption order in relation to a child, where a previous application, including an application for an English, Scottish or Welsh adoption order, or for an order for adoption made in the Isle of Man or any of the Channel Islands, made by the same persons in relation to the same child, was refused by any court, unless, in refusing the previous application, the court directed that this paragraph should not apply, or it appears to the court that there is a change of circumstances or other reason which justifies the second application.

Section 46: Applications for adoption

Section 46 provides that an application for an adoption order may be made by a couple or one person but only if it is made under section 47 or 48 and one of the following conditions is satisfied. The first condition is that at least one of the couple or the applicant is domiciled in a part of the United Kingdom, any of the Channel Islands or the Isle of Man (*subsection (2)*). The second condition is that both of the couple have, or the applicant has, been habitually resident in a part of the United Kingdom, any of the Channel Islands or the Isle of Man for at least one year ending with the date of the application (*subsection (3)*). The term “couple” is defined in section 159(3). An application for an adoption order may only be made if the person to be adopted has not reached age 18 by the date of the application (*subsection (4)*). *Subsection (5)* provides that 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.

Section 47: Adoption by couple

Under section 47 an application for an adoption order by a couple may only be made where both of them have reached the age of 21. However, where one of them is the mother or father of a child to be adopted, an application may be made if that person is 18 or over and the other person is 21 or over.

Section 48: Adoption by one person

Subsection (1) provides that an application may be made by one person who is 21 and is not married or a civil partner. In certain circumstances, an adoption application may be made by one person who is a partner of another person. A partner of a natural parent may adopt the child of that natural parent (*subsection (2)*). “Partner” is defined in section 159(6). An adoption order may be made on the application of one person who is 21 or over and is either married or a civil partner, if the court is satisfied that the person’s spouse/civil partner cannot be found; the spouses/civil partners have separated and are living apart, and the separation is likely to be permanent; or the person’s spouse/civil partner is incapable of making an application for an adoption order because of (physical or mental) ill-health (*subsections (3) and (4)*).

An adoption order may also not be made on the application under this section by the mother or father of the person to be adopted unless the court is satisfied that: the other natural parent is dead or cannot be found; or by virtue of the provisions set out in *subsection (6)* in relation to section 28 of the Human Fertilisation and Embryology Act 1990 or sections 34 to 47 of the Human Fertilisation and Embryology Act 2008; or there is some other reason justifying the child’s being adopted by the applicant alone (*subsection (5)*). Under this subsection, where the court makes an adoption order, the court must record that it is satisfied with the facts, or record the reason justifying the child’s being adopted by the applicant alone.

Section 49: Post-adoption contact

Section 49 provides for the making of orders which deal with contact arrangements at the adoption order stage and subsequently between an adopted child and those persons listed in *subsection (3)*. It provides that orders under this section can only be made where an adoption agency has placed or was authorised to place a child for adoption and the court is making, or has made an adoption order (*subsection (1)*).

When making the adoption order or at any time afterwards the court may either make an order requiring the person in whose favour the adoption order is or has been made to allow the child to visit or stay with the person named in the order made under *subsection (2)(a)*, or for the person named in that order and the child otherwise to have contact with each other or an order prohibiting the person named in the order from having contact with the child (*subsection (2)(b)*). The court may also, when making an adoption order, make an order under *subsection (2)(b)* prohibiting contact on its own initiative (*subsection (6)*).

Subsection (3) lists the persons that may be named in an order under section 49. These include former relatives and guardians of the child, any person who had parental responsibility for the child immediately before the making of the adoption order, any person entitled to make an application for a section 23 order (contact during placement), as well as any person who has lived with the child for at least one year. *Subsection (7)* provides that the one year period need not have been continuous but must not have started more than five years before the making of the application.

Subsection (4) provides that the child, the person who has applied for the adoption order or the child's adoptive parents may make an application for a post adoption contact order under section 49 without the permission of the court. Any other person may apply for an order if they have obtained the permission of the court to do so (*subsection 4(c)*).

Subsection (5) sets out the matters that the court must consider when deciding whether to grant permission, under *subsection (4)(c)*, to apply for an order. It provides that the court must consider the possible harm that might be caused to the child by the proposed application, the applicant's connection to the child, and any representations that are made to the court by the child, or the person who has applied for the adoption order or the child's adoptive parents.

Subsection (8) provides that where section 49 applies, an order under Article 8 of the Children Order may not provide for contact between the child and any person who may be named in a section 49 order.

Section 50: Orders under section 49: supplementary

An order under section 49 may contain directions on how it will be carried into effect, be made subject to appropriate conditions, be varied or revoked following an application by the child, the adoptive parents or the person named in the order

under section 49 and has effect until the child's 18th birthday, or any earlier date specified by the court, unless revoked (*subsection (1)*).

Subsection (2) provides that *subsection (3)* applies to proceedings; on an application for an adoption order in which an application for a section 49 order is made, or the court indicates that it is considering making such an order on its own initiative; an application for a section 49 order; on an application for this order to be varied or revoked. *Subsection (3)* provides that the court must, (in the light of any rules made by virtue of *subsection (4)*), draw up a timetable in relation to orders under section 49 and give directions for ensuring, so far as is reasonably practicable, that any timetable is adhered to.

Subsection (4) sets out that rules of court may specify periods within which specified steps must be taken in relation to proceedings to which *subsection (3)* applies and make other provision with respect to such proceedings for the purpose of ensuring that, as far as reasonably practicable, the court makes determinations about section 49 orders without delay.

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.

Section 52: Modification of Children Order in relation to adoption

Under the Children Order, a child who is authorised to be placed for adoption by an adoption authority is looked after by the authority, whether or not the child is actually placed for adoption. The intention in extending the 'looked after' status to children where there is authorisation to place for adoption is to ensure that it is clear that the authority is to have a continuing responsibility for managing and overseeing the child's future, and regularly reviewing their progress, until an adoption order is made. This also applies to a child who has been placed for adoption by an adoption authority and is less than 6 weeks old.

However, in order to reflect the particular circumstances of placement for adoption, certain provisions in the Children Order will need to be modified or disapplied where an adoption authority is authorised to place a child for adoption, whether or not the child is placed. *Subsection (1)* provides that such modification or disapplication may be made by way of regulations. The provisions are Article 26(2)(b), (c) and (d) and (3)(b) of the Children Order (duty to ascertain wishes and feelings of certain persons) and Articles 29 and 39 (promoting contact with parents and parents' obligation to contribute towards maintenance) (*subsection (2)*).

Subsection (3) makes similar provision to modify or disapply specified provisions of the Children Order where an appropriate voluntary organisation (see section 2(3) for the definition of "appropriate voluntary organisation" – means a voluntary organisation which is an adoption society in respect of which a person is registered) is authorised to place a child for adoption or has placed a child for adoption who is less than 6 weeks old.

Subsection (4) provides that where a child's home is with persons who have given notice of intention to adopt, no contribution is payable under Articles 38 to 43 of the Children Order (contributions towards maintenance of children looked after by an authority) in respect of the period referred to in *subsection (5)*. *Subsection (5)* sets out when the period begins and ends. *Subsection (6)* defines that the "notice of intention to adopt" includes any notice of intention to apply for an adoption order under the law of any part of the United Kingdom.

Section 53: Disclosing information to prospective adopters

Section 53 provides that the general regulation making power under section 9 may be used to require adoption agencies in prescribed circumstances to provide prescribed information to prospective adopters. The intention is to require adoption agencies to provide prospective adopters with the necessary information about a child (for example the child's needs, interests, how the child relates to other children and adults and the child's education and health) to help them decide whether to accept a match that the adoption agency suggests with a child.

Section 54: Revocation of adoptions on legitimation

Section 54 provides that, where a child is adopted by one natural parent as the sole adoptive parent, the adoption order may, in circumstances where a child is legitimised by the subsequent marriage of, or formation of a civil partnership by, the child's natural parents to each other, on application, be revoked by the court in which the adoption order was made. In *subsection (2)* the reference to the court in which the adoption order was made includes a reference to any other county court.

Sections 55 to 64: Disclosure of information about a person's adoption

Sections 55 to 64 introduce new provisions on the information that adoption agencies must keep in relation to a person's adoption, the form it must take and the manner in which it should be kept, also the information that adoption agencies must disclose to adopted adults on request, the information that courts must release to adopted adults on request and the information that adoption agencies may release to adopted adults, birth parents and others. The information kept will be about the adopted person, their birth parents and siblings, adoptive parents and siblings, other relatives, and social workers' reports, including health reports. Many of the provisions on the disclosure of information provide powers for the making of regulations to enable the necessary detail to be set out in secondary legislation.

These provisions cover the two types of information held under section 55 - protected information (see section 56) and information which is not protected (see section 57).

The Act establishes a new system for access to protected information about adopted persons and others involved in their adoption. Currently information

about an adopted person is held by three sources: the adopted person's adoption agency, which would normally hold case details and other information; the Registrar General, who holds birth records and basic information about the adopted person's adoption, such as their adoptive name and the names of their adoptive parents; and the court, which will hold reports submitted to it and records of the adoption proceedings. Under these provisions, whilst the Registrar General will retain the duty to maintain the Adopted Children Register and the Adoption Contact Register, the adoption agency will be the main "gateway" for access to this information.

Under the new system, the adopted adult will have a right to certain information under section 59. A person may apply to the appropriate adoption agency (appropriate adoption agency is defined in section 64) for protected information about a person involved in an adoption, such as the adopted person, their birth parents or the adoption social worker. If the protected information is about an adult, section 60 will apply. If the protected information is about a child or it is not possible to disclose protected information about an adult without also disclosing protected information about a child, section 61 will apply. Regulations may be made to provide for determinations made by adoption agencies under these provisions to be reviewed by an independent panel constituted under section 12.

These sections will only apply to adoptions that take place after the Act has been implemented. The arrangements for access to information for those adopted prior to the date of coming into operation of sections 55 to 64 will be provided for by section 102.

Section 55: Information to be kept about a person's adoption

Section 55 provides a power to make regulations to prescribe the information that an adoption agency must keep in relation to a person's adoption, the form it should take and the way it should be kept. The information kept will be about the adopted person, their birth parents and siblings, adoptive parents and siblings, other relatives, and social workers' reports. *Subsection (3)* provides a power to make regulations for the transfer of information between adoption agencies, for example where the original adoption agency is ceasing to operate.

Section 56: Restrictions on disclosure of protected etc. information

Section 56 makes provision for protected information. Protected information is defined in *subsection (3)*. It is any identifying information (defined in *subsection (4)*) sought by someone other than the person it is about, and any information held under *subsection (2)*. Under *subsections (1) and (2)* protected information must only be disclosed in accordance with sections 55 to 64.

Identifying information would include names, residential, educational and employment addresses, photographic or audio-visual material, case records and legal and medical information held by adoption agencies. The information held under *subsection (2)* is any information held by an adoption agency, which it has

obtained from the Registrar General under section 78(5) or any other information that would enable an adopted person to obtain a certified copy of their birth record or any information about an entry in the Adoption Contact Register about the adopted person.

Subsection (5) provides that the disclosure of protected information where an agreement is reached that includes the adoption agency is not prevented by anything in this group of sections. This is intended to allow agreement between the adoption agency, the adoptive parents and the birth parents for the sharing of protected information. *Subsection (6)* provides a power to make regulations which may authorise or require an adoption agency to disclose protected information to someone other than the adopted person.

Section 57: Disclosure of other information

Section 57 provides for the disclosure of information held under section 55 which is not defined as protected information. *Subsection (2)* enables an agency to disclose this information to any person for the purposes of its functions. This could, for example, be background information about the child's progress to be disclosed to his birth family, without disclosing the child's new identity or whereabouts. *Subsection (3)* provides that an adoption agency must disclose prescribed information to a prescribed person in prescribed circumstances.

Section 58: Offence

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

Section 59: Disclosing information to adopted adult

Section 59 makes provision for the disclosure of information held by adoption agencies and courts to adopted adults. It gives the adopted adult the right under *subsection (2)(a)* to receive any information held by the adoption agency necessary to enable him to obtain a certified copy of his or her birth record, unless the High Court orders otherwise. Under *subsection (3)*, the High Court may make an order on application from the adoption agency to withhold this information if it believes that the circumstances are exceptional. An example of when the High Court may exercise this power is where it is considered that disclosure would lead to a serious crime being committed. *Subsection (2)(b)* allows the adopted adult to receive prescribed information his or her adoptive parents received under section 53. Under *subsection (4)* the adopted person has the right to request from the court a copy of a prescribed document or prescribed order relating to his or her adoption. *Subsection (6)* provides that 'prescribed document or order' means prescribed by rules of court. Under *subsection (5)* the documents which the adopted person may request from the court will not contain protected information.

Section 60: Disclosing protected information about adults

Section 60 provides for the process that an adoption agency must undertake when an application is made for the disclosure of protected information about an adult. *Subsection (1)* provides that this process applies where any person applies to the appropriate adoption agency for protected information and none of that protected information is about a person who is a child at the time that the application is made.

Subsection (2) provides that the agency is not obliged to process an application for disclosure of information unless it considers that it is appropriate to do so. Where an agency does consider that it is appropriate to proceed with the application, *subsection (3)* obliges it to take all reasonable steps to obtain the views of the person the information is about as to the disclosure of that information.

Subsection (4) gives the agency discretion to proceed with the application to disclose the information if it considers it appropriate to do so. *Subsection (5)* provides that in making a decision as to whether or not it is appropriate to proceed with the application or to disclose the information, the agency must consider the welfare of the adopted person, any views that it has obtained under *subsection (3)*, any matters that may be prescribed in regulations and all the other circumstances of the case.

Under *subsection (6)*, this section does not apply to a request for information under section 59(2), where a request is made by an adopted adult for either the information needed to obtain a certified copy of his or her birth record or the information given by an agency to his or her adopters under section 53. Applications by an adopted person for the disclosure of all other protected information fall within this section or section 61. Section 60 does not apply to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of section 56(6).

Section 61: Disclosing protected information about children

Section 61 provides for the process that an appropriate adoption agency must undertake when an application for disclosure of protected information is made to it, and any of that information is about a person who is a child at the time that the application is made. This is set out in *subsection (1)*.

Subsection (2) provides that the agency is not obliged to proceed with an application for disclosure of information unless it considers that it is appropriate to do so. If the agency does proceed with the application, *subsection (3)* provides that where the information relates to a child, the agency must take all reasonable steps to obtain the views of any parent or guardian of the child as to the disclosure of the information. If the agency considers it appropriate to do so, it must also seek the child's views as to the disclosure of the information. In doing so the agency must take into account the child's age and understanding, including the

ability to understand the consequences of what is being asked, and all the other facts of the case.

Where the agency decides to proceed with the application, *subsection (4)* provides that where the information relates to a person who has attained the age of 18 at the time that the application is made, the agency must take all reasonable steps to obtain their views as to the disclosure of the information.

Subsection (5) gives the agency discretion to disclose the information if it considers it appropriate to do so. This discretion must be exercised having regard to *subsections (6) and (7)*.

Subsection (6) provides that in deciding whether or not to proceed with an application for the disclosure of information, or to disclose that information, where any of the information relates to a person who at the time the application is made is an adopted child, that child's welfare must be the paramount consideration. In the case of any other child, the agency must have particular regard to that child's welfare.

Subsection (7) provides that in deciding whether or not to proceed with an application to disclose information, or to disclose any information, the agency must consider the welfare of the adopted person (where they are not an adopted child), any views obtained under *subsections (3) and (4)*, any prescribed matters and all the other circumstances of the case.

Under *subsection (8)* this section does not apply to a request for information under section 59(2), where a request is made by an adopted adult for either the information needed to obtain a certified copy of his or her birth record or the information given by an agency to his or her adopters under section 53. Applications by an adopted person for the disclosure of all other protected information fall within this section or section 60. Section 61 does not apply to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of section 56(6).

Section 62: Counselling

Section 62 makes provision in respect of counselling for those seeking information under these sections, those considering consenting to or objecting to the disclosure of information, and those considering an agreement for the sharing of protected information under section 56(5). *Subsection (1)* provides a power to make regulations to require adoption agencies to provide information about access to counselling services and *subsection (2)* provides for regulations to require adoption agencies to make arrangements to secure the provision of counselling to those seeking information in prescribed circumstances. The intention is to make counselling available to an adopted person, if they wish to access it, where they apply to the agency for the disclosure of protected information about another person. *Subsection (3)* provides a power to make regulations to enable adoption agencies to disclose the information that is needed by the counselling agency for the purposes of providing the counselling.

Where the counselling is to be provided outside the United Kingdom, the adoption agency may require the person who is to receive the counselling to pay a prescribed fee. The regulations may require an adoption authority or an appropriate voluntary organisation to provide counselling for the purposes of arrangements under subsection (2) (*subsection (4)*).

Section 63: Other provision to be made by regulations

Section 63 provides for regulation making powers which will provide for the balancing of the rights of individuals, and the operation of the new duties for adoption agencies and the Registrar General under sections 55 to 64. *Subsection (1)* provides a power to make regulations concerning the operation by adoption agencies of their functions under sections 55 to 64, and the manner in which information may be received by adoption agencies.

Subsection (2) provides a power to make regulations for the recording of agreements made by virtue of section 56(5) and the information to be provided on an application for the disclosure of information under these provisions.

Subsection (3) provides a power to make regulations requiring adoption agencies to give prescribed persons prescribed information about their rights or opportunities to obtain information or to give their views as to its disclosure. For example, adoption agencies must inform the birth parents and adoptive parents at the time of the placement of the child of the rights of individuals to request protected information.

Under subsection (3)(b), regulations may be made to require adoption agencies to seek prescribed information from, or give prescribed information to, the Registrar General. Adoption agencies will be required to obtain information held on the adopted person's birth record from the Registrar General, if the agency receives a request from the adopted person for that information.

Subsection (4) provides a power to make regulations to require the Registrar General to disclose to any person any information which they need to help them contact the appropriate adoption agency (defined in section 64) and to disclose to the appropriate adoption agency information required by that agency about an entry relating to the adopted person on the Adoption Contact Register. This may assist the adoption agency in ascertaining the wishes of an adopted person or of a particular relative in relation to contact with the other party.

Subsection (5) provides a power to make regulations for the payment of fees to the adoption agency by anybody who applies to the agency under sections 59, 60 or 61 for information. The exception is that the adopted person cannot be charged in respect of any information disclosed to him under this group of sections about any person who but for the adopted person's adoption would be related to him or her by blood, including half-blood, marriage or civil partnership.

Subsection (6) provides a power to make regulations for the payment of a fee by an adoption agency to the Registrar General for disclosure of information from the Adoption Contact Register.

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

Subsection (7) requires the approval of the Department of Finance to the making of regulations under subsections (3) to (6) which relate to the Registrar General.

Section 64: Sections 55–64: Interpretation

Section 64 defines some of the terms used in sections 55 to 64.