

*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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 - Adoption**

##### *Chapter 1 – Introductory*

##### *Section 1: Considerations applying to the exercise of powers*

Section 1 is an overarching provision that will apply whenever a court or an adoption agency (a Health and Social Care Trust or an appropriate voluntary organisation) is coming to any decision relating to the adoption of a child. This includes any decision by the court about whether or not to dispense with parental consent to adoption, or to make a contact order in respect of a child under section 23 or 49. The Act introduces into adoption law principles already in the Children (Northern Ireland) Order 1995 (the Children Order). The paramount consideration of the court or adoption agency in any decision is the child's welfare (*subsection (2)*). This brings the welfare test into line with that in the Children Order, with the important addition that the court or adoption agency must consider the child's welfare throughout the child's life, in recognition of the lifelong implications of adoption. The court or adoption agency must also bear in mind that in general any delay is likely to prejudice the child's welfare (*subsection (3)*).

A welfare checklist is set out in *subsection (4)* and must be applied by the court or agency in determining the best interests of the child in any decision relating to adoption. This is modelled on the equivalent provision in the Children Order, but is tailored to address the particular circumstances of adoption. It includes a requirement on the court and adoption agency to consider the value to a child of a stable and harmonious family unit. The court and the adoption agency must have regard to the child's ascertainable wishes and feelings about the decision (having regard to the child's age and understanding) and to the child's particular needs (for example, physical or educational). It also obliges the court or adoption agency to have regard to the relationship the child has with their relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, and the prospects of, and benefits to, the child of this

relationship continuing, the ability of the child's relatives to provide the child with a secure home and to meet the child's needs, and their views concerning the decision relating to the adoption of the child. 'Relative' includes the child's mother and father – see *subsection (8)*. *Subsection (5)* provides that in placing a child for adoption, the agency must give due consideration to the child's religious persuasion, racial origin, cultural and linguistic background. This is in line with the duty placed on an authority by Article 26(3)(c) of the Children Order, when they take any decision about a looked after child, including where they should be placed.

In taking any decision relating to the adoption of a child, the court or adoption agency will have to consider the whole range of powers available to it under this Act and the Children Order and a court may only make an order where it considers that it would be better for the child than making no order (*subsection (6)*).

“Coming to a decision relating to the adoption of a child”, in relation to a court, is defined at *subsection (7)* and includes decisions in any proceedings where the orders that might be made by the court include an adoption order or placement order (or the revocation of such an order) or an order under section 23 or 49 (or the revocation or variation of such an order), and coming to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an adoption agency or individual under this Act. It does not include coming to a decision about granting leave in any other circumstances.

## ***Chapter 2 – The Adoption Service***

Chapter 2 makes provision for the structure of the adoption service. Some of the sections re-model provisions of the Adoption (Northern Ireland) Order 1987. This Chapter also underpins some important areas of new policy dealing with adoption support services (including financial support) and independent reviews of qualifying determinations (see section 12).

### ***Section 2: Basic definitions***

This section sets out some basic definitions. *Subsection (1)* provides that the services provided under section 4(1) are to be known as "the Adoption Service" and that an adoption authority or an appropriate voluntary organisation may be referred to as an "adoption agency" (*subsection (2)*). An “appropriate voluntary organisation” is a voluntary organisation which is an adoption society in respect of which a person is registered; but in relation to the provision of any facility of the Adoption Service, references to an appropriate voluntary organisation or to an adoption agency do not include an adoption society if the registration is not in respect of that facility (*subsection (3)*). An “adoption society” is a body whose functions consist of or include making arrangements for the adoption of children. Registered means registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and registration means registration under that Order (*subsection (5)*).

Registration in respect of an adoption society is treated as registered in respect of any facility of the Adoption Service for the purposes of the Act unless it is a condition of its registration that it may not provide that facility (*subsection (4)*).

*Subsection (6)* provides that adoption support services include counselling, advice and information in relation to adoption. Regulations will set out what other services are to fall within this definition. *Subsection (7)* provides that the Department must exercise the power under subsection (6)(b) to make regulations so as to secure that adoption authorities provide financial support.

*Subsection (8)* states that the references in this Chapter to adoption are to the adoption of persons wherever they may be habitually resident, effected under the law of any country or territory.

### ***Section 3: Adoption authority***

This section provides that every Health and Social Care trust (HSC trust) is the adoption authority for its own area (*subsection (1)*), but regulations may provide that, in relation to prescribed functions or services under this Act, another HSC trust may be the adoption authority in relation to that area (*subsection (2)*). This provision enables the Department to specify that one HSC trust may manage and provide prescribed adoption services on behalf of another or other HSC trusts. An HSC trust is defined in the Act as a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991, except for the Northern Ireland Ambulance Service, and references to an area of an HSC trust are to its operational area as specified under paragraph 3A of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (*subsection (3)*). *Subsection (4)* provides that regulations may amend the definition of an HSC trust in *subsection (3)*.

### ***Section 4: The Adoption Service***

Under section 4, every adoption authority must maintain within their area an adoption service designed to meet the needs, in relation to adoption, of children who may be adopted, their parents and guardians; persons wishing to adopt a child; and adopted persons, their parents, natural parents and former guardians, and for that purpose must provide the requisite facilities (*subsection (1)*). Facilities must include making, and participating in, arrangements for the adoption of children and for the provision of adoption support services (*subsection (2)*). In addition to the duty to make arrangements for the provision of adoption support services to the categories of persons listed in subsection (1), *subsection (3)(a)* places a duty on the adoption authority to make arrangements for the provision of adoption support services to persons prescribed in regulations. *Subsection (3)(b)* provides that an adoption authority may also extend the provision of such services to other persons.

Adoption authorities may meet their obligation to provide the requisite facilities by ensuring that they are provided by an appropriate voluntary organisation, or in relation to the provision of adoption support services of a prescribed description,

a voluntary organisation, or such other persons as may be specified in regulations (*subsection (4)*). A “voluntary organisation” is defined in section 159 as a body (other than a public body) the activities of which are not carried on for profit. *Subsection (5)* provides that facilities of the adoption service must be provided in conjunction with any other social care provided by an adoption authority, with appropriate voluntary organisations and with voluntary organisations providing facilities under subsection 4(a), so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.

*Subsection (6)* provides that “social care” has the meaning given by section 2(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (and, in particular, social care in so far as it relates to children).

The provisions in sections 2, 3 and 4 will be used to give effect to the new framework for adoption support services, including financial support.

### ***Section 5: Assessments etc. for adoption support services***

An adoption authority must, under section 5, carry out an assessment of the needs for adoption support services of any of the persons mentioned in section 4(1) (that is, children who may be adopted, their parents and guardians; persons wishing to adopt a child; and adopted persons, their parents, natural parents and former guardians) or any other person of a prescribed description, at that person's request.

The assessment will provide a mechanism to assist in accessing adoption support services. It is intended that the assessment will provide a means of facilitating the provision of a planned and co-ordinated support package. It will link with other HSC trusts’ functions, including other health services, and services provided by the Education Authority, where the needs for such services are identified, with the aim of identifying a co-ordinated package of support to help adoptions succeed.

Regulations made under *subsection (8)(a)* may set out the circumstances in which the categories of person prescribed in the regulations made under *subsection (1)(b)* are to have a right to request and receive an assessment. An adoption authority may also carry out an assessment of the needs of any other person for adoption support services (*subsection (2)*). Adoption authorities may call upon the expertise of an appropriate voluntary organisation, a voluntary organisation, or persons prescribed in the regulations made under section 4(4) (b) to assist them in carrying out an assessment (*subsection (3)*).

Under *subsection (5)*, where a person's needs for adoption support services are identified in an assessment, the adoption authority must provide them to the following categories of persons: a child who may be adopted, a parent or guardian of a child who may be adopted, a person wishing to adopt a child, an adopted person, a parent, natural parent or former guardian of an adopted person, or a person who is within a prescribed description. In all other cases, it must decide whether to provide the services assessed as needed (*subsection (4)*).

Where an adoption authority decides to provide services, or it is under a duty to do so, the adoption authority will be required, in prescribed circumstances, to prepare a plan for the provision of services and keep the plan under review (*subsection (6)*). It is intended that a plan will be required where a number of different adoption support services are being provided, in order to co-ordinate the provision of those services.

*Subsections (7) and (8)* provide a power to make provision in regulations about the carrying out of assessments, including considerations to be taken into account during the assessment, preparing and reviewing plans, the provision of services in accordance with plans and reviewing the provision of adoption support services. These regulations will underpin the delivery of the new framework for adoption support including financial support. Regulations under *subsection (8)(b)* may set out the type of assessment which is to be carried out for each of the categories of person mentioned in *section 4(1)* and anyone else who receives an assessment for adoption support services. Regulations under *subsections (8)(f) and (g)* may set out the circumstances in which adoption support services may be provided subject to conditions and the consequences of failure to comply with any such conditions. It is anticipated that regulations could, for example, be used to enable an adoption authority to specify that financial support must be spent on specified items or services and that sums given may be recouped where they are not spent accordingly. This may be appropriate where a one-off grant is being paid for a specific purpose, but is unlikely to be appropriate for a regular adoption allowance. Regulations made under *subsection (8)(h)* may set out where the responsibility for carrying out an assessment and the provision of any adoption support services lies in cases where a child is placed with an adoptive family living in a different HSC trust area, together with funding arrangements. This is intended to ensure that it is clear which HSC trust is to provide adoption support services where a child is placed across HSC trust boundaries.

An assessment for adoption support under this provision may be carried out at the same time as an assessment of that person's needs under any other statutory provision (*subsection (9)*). This provision clarifies that an assessment for adoption support services may link with other statutory assessments of an individual's needs. If at any time during the assessment it appears to the adoption authority that the person may need services which are provided by another health and social care body or by the Education Authority, the adoption authority must notify the body or the Education Authority. *Subsections (9) and (10)* are intended to promote the joined up provision of public services in support of adoption.

*Subsections (11) and (12)* impose a duty on public bodies to co-operate in the exercise of functions under this section if it is consistent with the exercise of their functions more generally.

### ***Section 6: Adoption Support services: duty to provide information***

*Subsection (1)* places a new duty on adoption authorities to provide a range of information about adoption support services and other prescribed information

to any person who has contacted the adoption authority to request information about adopting a child, or has informed the adoption authority that they wish to adopt a child. Adoption authorities must also provide such information to any person within their area who they are aware is the parent of an adopted child or to any such person upon request. This subsection also makes provision for regulations to prescribe the circumstances in which an adoption authority does not need to provide the information.

*Subsection (2)* sets out the information that the adoption authority must provide, including information about the adoption support services available to people in the adoption authority's area and information about the right to request an assessment for adoption support services. It also makes provision for regulations to prescribe other information that must be provided by the adoption authority.

### ***Section 7: Arrangements on cancellation of registration***

Where a body ceases to be an appropriate voluntary organisation by virtue of the cancellation of its registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, section 7 empowers the Department to direct that organisation to make appropriate arrangements for the transfer of the organisation's functions relating to children.

### ***Section 8: Inactive or defunct adoption societies, etc.***

Section 8 empowers the Department to direct the relevant adoption authority to take action where an appropriate voluntary organisation is inactive or defunct or where a body has ceased to be an appropriate voluntary organisation by virtue of the cancellation of its registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and it has not made such arrangements for the transfer of its functions relating to children as are specified in a direction given by the Department. Before giving such a direction the Department, if practicable, should consult with both the organisation and the adoption authority. It also enables the Department to charge the organisation for the expenses necessarily incurred by it or on its behalf as a result of its failure to make appropriate arrangements.

### ***Section 9: General power to regulate adoption agencies***

Section 9 enables regulations to be made in respect of adoption agencies (i.e. adoption authorities and appropriate voluntary organisations). *Subsection (1)* provides a general power to make regulations for any purpose relating to the exercise by adoption agencies of their functions in relation to adoption. *Subsection (2)* provides that the power to make regulations under section 9 is not limited by the specific powers in sections 10 to 12, 42, 53, 55 to 64 and 102, or by any other powers exercisable in respect of adoption agencies. *Subsection (3)* enables regulations to be made under this provision to provide that a person who breaches those regulations commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.



### ***Section 10: Management, etc., of agencies***

Section 10 amplifies the general regulation-making power in section 9 in relation to the management and general operation of adoption agencies. *Subsection (1)* provides for regulations to be made in respect of adoption authorities and appropriate voluntary organisations to ensure that they are suitably managed and staffed, that their premises are fit for the purpose and that adequate arrangements are made for the keeping of information.

*Subsection (2)* provides that regulations may be made under subsection (1) prohibiting a person's appointment to a prescribed post within an adoption agency unless they are registered in, or in a particular part of, the register maintained under section 3 of the Health and Personal Social Services Act (Northern Ireland) 2001.

The powers in *subsection (3)* apply only to appropriate voluntary organisations. In the case of adoption authorities, such powers are either inappropriate or unnecessary because any child placed, or authorised to be placed, for adoption by an adoption authority is to be treated as a looked after child. Regulations may be made to ensure that appropriate voluntary organisations are managed by persons who are fit to do so, and for the health and welfare of children placed by appropriate voluntary organisations to be adequately protected. *Subsection (3)* also provides that regulations may be made imposing requirements regarding the financial position of the organisation and the appointment of a manager.

*Subsection (4)* sets out that regulations may be made concerning the conduct of appropriate voluntary organisations, including the provision of facilities and services; the keeping of accounts; notification to the RQIA of events occurring in the organisation's premises; notification to the RQIA and making arrangements for the running of the organisation when its manager is absent, and specifying the information to be given in such a notice; changes in the person managing the organisation and changes in its ownership or the identity of its officers, and the payment of a prescribed fee in respect of any notification of change of ownership; and arrangements for dealing with complaints.

### ***Section 11: Fees***

Section 11 amplifies the powers in section 9 in relation to the charging and payment of fees. *Subsection (1)* enables the Department to make regulations providing for the fees which may be charged by adoption agencies for the provision of prescribed services to those providing facilities as part of the Adoption Service (including Adoption Services in Great Britain, the Channel Islands and the Isle of Man), and for the fees to be paid by adoption agencies to those providing services on their behalf or assisting in providing those services. This power could, for example, be used to make regulations to underpin or make changes to the “inter-agency fee” (a payment currently made by an adoption agency to another adoption agency which has recruited an adoptive family on its behalf). The power could also be used to make regulations to enable payments

to persons assisting in the assessment of adopters, such as members of adoption panels.

*Subsection (2)* enables the Department to make regulations prescribing the fees which may be charged by an adoption authority in respect of prescribed facilities of the Adoption Service, provided that the conditions in *subsection (3)* are met. The conditions are that the facilities must be provided in connection with the adoption of a child brought into the United Kingdom for the purpose of adopting the child, or in connection with a Convention adoption, an overseas adoption or an adoption effected under the law of a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man.

It is intended that any charges provided for by these regulations will contribute towards an adoption authority's costs in providing information, preparing and assessing prospective adopters, obtaining medical reports and police checks and preparing post-placement and post-adoption reports in respect of inter-country adoption cases. They will not include any element of profit.

*Subsection (4)* enables regulations to prescribe the fees which may be charged by an adoption agency in respect of the provision of counselling provided in connection with the disclosure of information in relation to a person's adoption. This means that regulations may enable adoption authorities as well as appropriate voluntary organisations to charge fees for the provision of such counselling services. It also provides for those fees to be regulated. It is intended to provide for an adoption authority or appropriate voluntary organisation to be able to charge a fee to any person, other than an adopted person, who is receiving counselling in connection with the disclosure of information about an adoption made before the Act is implemented. The fee may only be for the reasonable costs incurred by the adoption agency for the provision of the counselling.

### ***Section 12: Independent review of qualifying determinations of adoption agencies***

Section 12 amplifies the powers in section 9 in relation to the establishment of a review procedure in respect of qualifying determinations made by adoption agencies. A person in respect of whom a qualifying determination, specified in regulations, has been made may apply to a panel established by the Department for a review of the relevant determination. It is intended to use this provision to provide prospective adopters with a right to request a referral to a panel where an adoption agency indicates that it is minded to turn down their application to adopt.

It is also intended that the independent review mechanism will review qualifying determinations made by adoption agencies concerning the disclosure of protected information (defined in section 56) held by the adoption agency where, under regulations made under the Act, the adoption agency has discretion as to whether to disclose such information.



Regulations may be made under *subsection (3)* dealing with the duties and powers of a panel, administration and procedures, appointment of panel members, payment of fees, the duties of adoption agencies in connection with reviews and the monitoring of reviews.

*Subsection (4)* provides that regulations made under *subsection (3)(e)* may enable the Department to request a contribution towards the cost of a review from the adoption agency that made the original determination. *Subsections (5) and (9)* provide that the sums payable to the Department must not, taking one financial year with another, exceed the costs incurred in performing the independent review functions.

*Subsection (6)* enables the Department to make an arrangement for an organisation to carry out the functions in relation to the panel on its behalf. "Organisation" is defined in *subsection (10)* as including a public body and a private or voluntary organisation. *Subsection (8)* enables the Department to make payments to such an organisation and under *subsection (7)* the organisation must perform its functions in accordance with any directions which the Department may give.

### ***Section 13: Information concerning adoption***

Section 13 requires adoption agencies to give the Department statistical or other general information relating to adoption as may be required. The information required is in respect of the agency's performance of all or any of its functions relating to adoption, and in respect of the children and other persons in relation to whom it has exercised those functions. Information must be provided at the time and in the form directed by the Department. *Subsection (3)* empowers the Department to publish abstracts of the particulars sent to it.

### ***Section 14: Inspection of premises, etc.***

Section 14 provides for a person authorised by the Department to inspect any premises where a child who has been placed by an adoption agency, or a child in respect of whom a notice of intention to adopt has been given under section 41, is or will be living. *Subsection (4)* enables a person carrying out an inspection of premises under *subsection (1)* to visit the child there and examine the state of the premises and the treatment of the child. *Subsection (2)* enables the Department to require an adoption agency to give it information and access to records (in whatever form) relating to the discharge of its functions in relation to adoption. *Subsection (5)* provides for the inspection of any computer and associated apparatus being used in connection with an adoption agency's records.

*Subsection (3)* provides that inspections under this section must be conducted by a person authorised by the Department and *subsection (6)* gives any such authorised person a right of entry to premises at any reasonable time and a right to request reasonable assistance. The authorised person must, if required, produce documentation showing their authority to carry out the inspection (*subsection (7)*). Obstructing a person authorised to inspect premises or records

is an offence, punishable on summary conviction by a fine up to level 3 on the standard scale (*subsection (8)*).

### ***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.

*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.

#### ***Chapter 4 - Status of Adopted Children***

Chapter 4 provides for the status of adopted children, thereby making clear how they are to be treated in law.

### ***Section 65: Meaning of adoption in Chapter 4***

Section 65 sets out the meaning of "adoption" in Chapter 4. For the purpose of this Chapter, adoption means adoption by adoption orders made in Northern Ireland, England, Wales or Scotland, any of the Channel Islands, the Isle of Man and countries which have implemented the Hague Convention, overseas adoptions or an adoption recognised by the law of Northern Ireland and effected under the law of any other country. References to adoption in this Chapter are to adoptions effected after the date on which Chapter 4 comes into operation. References in other enactments to an adopted person within the meaning of Chapter 4 include a reference to an adopted child within the meaning of Part 5 of the Adoption (Northern Ireland) Order 1987.

### ***Section 66: Status conferred by adoption***

Section 66 provides for the determination of the legal status of an adopted person. *Subsection (1)* provides that the adopted person is to be treated in law as if born as the child of the adopter or adopters. *Subsection (2)* provides that an adopted person is the legitimate child of the adopters or adopter and, if adopted by a couple, or a partner of his parent, they are to be treated as if they had been born as the child of the relationship of that couple.

*Subsection (3)(a)* provides that in an adoption by the partner of a parent the adopted person is only to be treated in law as the child of the adopter and the partner of the adopter. In any other circumstances *subsection (3)(b)* provides that an adopted person is to be treated only in law as the child of the adopter or adopters (subject to *subsection (4)*). *Subsection (4)* provides that where the adopter is both a sole adopter and the natural parent, *subsection (3)(b)* is to have no effect with respect to anything dependant on the relationship to that parent, for example entitlement to property. A single parent may, for example, adopt their own child so that the child may cease to be illegitimate (although this now happens rarely).

*Subsection (5)* provides that this section has effect from the date of an adoption order being made in respect of an individual. *Subsection (6)* confirms that, subject to the other provisions of Chapter 4 and Schedule 4, this section applies for the interpretation of statutory provisions or instruments passed both before and after a person's adoption and has effect as respects events taking place on or after the adoption. *Subsection (7)* provides that this section does not apply to a statutory provision or other instrument passed or made before 1<sup>st</sup> October 1989 in so far as it contains a disposition of property; and does not apply to any public general Act in its application to any disposition of property in a statutory provision or other instrument passed or made before 1<sup>st</sup> October 1989.

The provisions in this section are intended only to clarify how an adopted child should be treated in law. They do not touch on the biological or emotional ties of an adopted child, nor are they intended to.

### ***Section 67: Adoptive relatives***

*Subsections (1) and (2)* enable a relationship that exists as a consequence of section 66 to be described in law as an adoptive relationship. An adopter may be referred to as an adoptive parent or as an adoptive father or an adoptive mother depending on the circumstances of the case and any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree. However, it does not prevent any term not qualified by the word "adoptive" from being treated as including an adoptive relative.

*Subsection (3)* provides that where there is a reference to the adoptive mother and father of a child, if the child has been adopted by two persons of the same sex who are a couple, or by a partner of the child's parent, where the couple are of the same sex, the reference is to be read as a reference to the child's adoptive parents.

### ***Section 68: Rules of interpretation for instruments concerning property***

Section 68 sets out the rules of interpretation for any instrument concerning the disposition of property. These rules are subject to any contrary indication and to Schedule 4 to the Act.

*Subsection (2)* applies where a disposition depends on the date of birth of a child or children of an adoptive parent(s). For the purposes of the disposition, the adopted person is to be treated as having been born on the date of the adoption order. Where two or more people have been adopted on the same date they are to be treated as if they had both been born on that date but in the order of their actual births. *Subsection (3)* gives examples of phrases in wills on which subsection (2) can operate.

*Subsection (4)* allows an adopted person to retain certain interests vested in him before his adoption. *Subsection (5)* provides that, where it is necessary to determine for the purposes of a disposition of property whether a woman can have a child, it is to be presumed that when she has attained 55 years of age she will not adopt a person after the execution of the instrument and, if she does, that person will not be treated as her child or, if she does so as one of a couple, as the child of the other one of the couple for the purposes of that instrument. *Subsection (7)* provides that section 68 does not apply to a statutory provision or other instrument passed or made before 1<sup>st</sup> October 1989.

### ***Section 69: Dispositions depending on date of birth***

*Subsection (1)* provides that where a child is born illegitimate and adopted by one of his natural parents as the sole adoptive parent, the date of his birth rather than the date of his adoption is taken into account in respect of entitlement to property. *Subsection (2)* sets out an example of when this might apply.



***Section 70: Property devolving with peerages etc.***

Section 70 provides that adoption does not affect the descent of any peerage or dignity or title of honour or the devolution of any property devolving with such titles. Thus, unless there is a contrary intention expressed in the instrument, an adopted person cannot inherit such a title or any associated property from his adoptive parents. Likewise, the natural child of a Peer who is adopted will inherit a peerage, dignity or title of honour and any property devolving with such titles from his birth parents. *Subsection (3)* provides that exceptions may apply where a contrary intention is expressed in the instrument.

***Section 71: Protection of trustees and personal representatives***

Section 71 provides for the protection of trustees or personal representatives who convey or distribute property in ignorance of the making or revocation of an adoption order.

***Section 72: Meaning of disposition***

Section 72 defines the terms "disposition" and "power of appointment" for the purposes of Chapter 4. *Subsection (3)* confirms that the provisions of this Chapter apply equally to an oral disposition as to a written one. For the purposes of Chapter 4, *subsection (4)* provides that the date of death of the testator is the date a will or codicil is treated as being made and *subsection (5)* provides that the provisions of the law of intestate succession are to be treated as if they are contained in an instrument that the deceased executed (while of full capacity) immediately before his death.

***Section 73: Miscellaneous***

Section 73 provides that the general principle of section 66 (that an adopted person is to be treated as if he or she had been born as the child of the adopter or adopters) is not to apply for the purposes of Articles 68 and 69 of the Sexual Offences (Northern Ireland) Order 2008 (sex with an adult relative), marriages or civil partnerships within prohibited degrees of relationship or to incest and, for these purposes, an adopted person remains part of his natural family. The only exception is that an adopted person cannot marry or form a civil partnership with their adoptive parent, as this falls within the prohibited degrees of relationship in Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 or Schedule 12 to the Civil Partnership Act 2004. Otherwise there are no restrictions on marriage or civil partnership within an adoptive family.

*Subsection (3)* lists other enactments which deal with questions of nationality and immigration, and to which the general principle of section 66 is also not to apply.

***Section 74: Pensions***

Section 74 provides that section 66(3), (the rule that an adopted child is to be treated only as the child of the adopter(s) or, in the case of an adoption by

a partner of a parent, only as the child of the adopter and the natural parent to whom he is a partner), does not affect an adopted person's entitlement to a pension payable to or for his benefit which is in payment at the time of his adoption.

### ***Section 75: Insurance***

Section 75 provides that any rights and liabilities under any insurance policy that a natural parent has effected for the payment on the death of the child for funeral expenses are transferred by virtue of the adoption of that child to the adoptive parents. The adopters are to be treated as if they took out the policy themselves. *Subsection (2)* makes clear that references in *subsection (1)* to adoptive parents are to be read, in the case of an adoption by a partner or a parent, as referring to the adopter and the adopter's partner.

### ***Chapter 5 – Registers***

Chapter 5 deals with registration issues surrounding adoption and the duties placed upon the Registrar General.

### ***Section 76: Adopted Children Register***

*Subsection (1)* places a duty upon the Registrar General to continue to maintain the Adopted Children Register and provides for entries to be made in the Register. *Subsection (2)* provides that the Adopted Children Register is not to be open to public inspection or search. *Subsection (3)* provides that entries may not be made on the Register unless they are made by adoption orders or by the amendment of adoption orders (*subsection (6)* and Schedule 1). *Subsection (4)* provides that a certified copy of an entry on the Register is evidence of an adoption to which it relates. *Subsection (5)* provides that where the birth information is contained in the Adopted Children Register, a certified copy of that entry is to be treated as a certified copy of an entry in the registers of live births. *Subsection (7)* provides that regulations may make provision for any person to have access to any information contained in the Adopted Children Register upon payment of a prescribed fee. *Subsection (8)* provides that regulations made under *subsection (7)* may provide that a relevant period must have expired in relation to the information. The relevant period in relation to the adoption of a child means the expiration of 100 years from the date of the child's birth or such other period as may be prescribed (*subsection (9)*). *Subsection (10)* provides that regulations made under *subsection (7)* allows the Registrar General to make arrangements with any person for the purpose of providing access to information, as mentioned in *subsection (7)* and, for that purpose, to transfer information to that person subject to conditions (including conditions as to the making of payments by that person to the Registrar General).

### ***Section 77: Searches and copies***

*Subsection (1)* places a duty on the Registrar General to continue to maintain an index of the Adopted Children Register at the General Register Office.

*Subsection (2)* provides that any person may search the index of the Register and obtain a certified copy of any entry. However, a person is not entitled to have a certified copy of an entry in the Adopted Children Register relating to an adopted person who has not attained the age of 18 years unless prescribed particulars have been provided to the Registrar General (*subsection (3)*). *Subsection (4)* provides that the terms, conditions and regulations as to payment of fees, and otherwise, applicable under the Births and Deaths Registration (Northern Ireland) Order 1976 are to apply in respect of searches, and supplies of certified copies, under *subsection (2)*.

### ***Section 78: Connections between the register and birth records***

*Subsection (1)* places a duty on the Registrar General to make traceable the connection between any entry in the registers of live-births or other records which has been marked "Adopted" and any corresponding entry in the Adopted Children Register. *Subsection (2)* provides that public access to this index is prohibited. *Subsection (3)* provides that any such information held under *subsections (1) and (2)*, and any other information which would enable an adopted person to obtain a certified copy of the record of their birth, may only be disclosed by the Registrar General in accordance with this section. *Subsection (4)* provides that, in relation to a person adopted before the appointed day a court may, in exceptional circumstances, order the Registrar General to give such information to a person. The appointed day is defined in *subsection (9)* as the day appointed for the commencement of sections 55 to 64. *Subsection (5)* provides that the Registrar General is to provide an appropriate adoption agency, upon application by the agency, with any information mentioned in *subsection (3)*. *Subsection (6)* provides that for people adopted before the commencement of sections 55 to 64, Schedule 2 applies and *subsection (5)* does not.

*Subsection (7)* enables the Registrar General to make regulations to set out the manner in which applications must be made by an adopted person aged under 18 who intends to be married or form a civil partnership requesting information as to whether their intended spouse or civil partner may be within the prohibited degrees of relationship for the purpose of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 and the Civil Partnership Act 2004. *Subsection (8)* enables the Registrar General to make regulations requiring the payment of a prescribed fee in respect of information given under section 78. A fee is not chargeable in respect of an application made under *subsection (7)*.

### ***Section 79: Adoption Contact Register***

*Subsection (1)* places a duty on the Registrar General to continue to maintain, in accordance with regulations, the Adoption Contact Register at the General Register Office. The Adoption Contact Register is a register in two Parts, designed to facilitate contact between adopted persons and their birth relatives where both parties have expressed a wish for such contact. *Subsection (2)* enables the Registrar General to prescribe in regulations the information about adopted persons who wish to make contact with their relatives to be included

in Part 1 of the Adoption Contact Register. *Subsection (3)* provides that the Registrar General may make an entry for an adopted person in Part 1 of the Register if a record of that person's birth is kept by the Registrar General, that person has attained the age of 18 years and the Registrar General is satisfied that the adopted person has such information as is necessary to obtain a copy of their birth record. Under *subsection (4)*, the Registrar General is able to make regulations prescribing the information about relatives of adopted persons to be included in Part 2 of the Adoption Contact Register. It is intended that these regulations will cover information similar to that included in the regulations made under subsection (2), such as names and addresses.

*Subsection (5)* provides that the Registrar General may only make an entry in Part 2 of the Register for a person who has attained the age of 18 and if the Registrar General is satisfied that he is a relative of an adopted person and has such information as is necessary to enable him to obtain a certified copy of the record of the adopted person's birth. *Subsection (6)* enables the Registrar General to make regulations providing for the disclosure of information contained in one Part of the Register to persons included in the other Part of the Register. Such regulations may provide, for example, that information held on the Register should only be given to the adopted person in order to enable them to make a choice as to whether to initiate contact with their relative(s). Subsection (6) also provides that regulations may be made by the Registrar General to set fees for the making or alteration of entries in the Register, and the disclosure of information contained in it.

### ***Section 80: Adoption Contact Register: supplementary***

Section 80 provides that the Adoption Contact Register is not to be open to public inspection or search (*subsection (1)*). *Subsection (2)* defines relatives. This definition will include, for example, parents, siblings, grandparents, great-grandparents, uncles, aunts, cousins, nephews and nieces, including by blood, half blood, marriage or civil partnership. *Subsection (3)* provides that the Registrar General must not give any information entered in the Register to any person except in accordance with section 79(6)(a) where regulations may provide for the disclosure of information contained in one Part of the Register to persons for whom there is an entry in the other part. The Registrar General must also not give any information entered in the Register in accordance with regulations made under section 63(4)(b) which require the Registrar General to disclose to the appropriate adoption agency any information the adoption agency requires about any entry relating to the adopted person on the Adoption Contact Register.

### ***Section 81: Interpretation***

Section 81 provides interpretation in respect of the provisions in Chapter 5. It defines the terms "prescribed", "records", "registers of births" and "regulations". It also provides that the Registrar General may maintain in any form any register,

record or index which the Registrar General is required to keep under these provisions.

### ***Chapter 6 - Adoptions with a Foreign Element***

The provisions in this Chapter incorporate many of the measures of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (“the 2001 Act”) and extend those measures with new safeguards and penalties.

The 2001 Act amended the Adoption (Northern Ireland) Order 1987, making provision to regulate intercountry adoption. The Act (together with equivalent Great Britain legislation) enabled the United Kingdom to ratify the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and introduced sanctions against those failing to follow the proper procedures for bringing children into the United Kingdom. The 2001 Act also clarifies that Trusts have a duty to provide, or arrange to provide, an intercountry adoption service and provides that children who are the subject of a Convention adoption will receive British nationality automatically.

The 2001 Act will largely be repealed when this Act is implemented, as the majority of the provisions amended the Adoption (Northern Ireland) Order 1987 and have been incorporated into this Act. Section 1 (power to make regulations giving effect to the Convention), section 2 (Central Authorities and accredited bodies) and Schedule 1 (which sets out the text of the Convention so far as material) of the 2001 Act will remain. Section 159(1) defines a Convention adoption order as an adoption order which is made by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001. The regulations which are to be made under section 1 of the 2001 Act will apply, with or without modification, to the provisions of this Act, for example, the conditions which must be satisfied before an application for a Convention adoption order may be made. Convention adoptions made in a country outside the United Kingdom, the Channel Islands or the Isle of Man are recognised, see section 65(1).

### ***Section 82: Restriction on bringing children in***

Section 82 imposes restrictions on British residents bringing or causing someone else to bring a child who is habitually resident outside the United Kingdom, any of the Channel Islands or Isle of Man into the United Kingdom with the intention of adopting the child in the United Kingdom, unless the person complies with prescribed requirements and meets prescribed conditions. It also makes it a criminal offence for a British resident to bring or cause someone else to bring a child habitually resident outside the British Islands who they have adopted within the last twelve months into the United Kingdom, unless they comply with prescribed requirements and meets prescribed conditions.

It is intended that regulations will require the British resident to be assessed and approved as suitable to adopt by an adoption agency, including a Great

Britain adoption agency, prior to bringing a child into the United Kingdom (*subsection (4)*).

The restrictions in this section do not apply if the child is intended to be adopted under a Convention adoption order (*subsection (2)*), as the provisions in the Hague Convention will apply in such circumstances.

Regulations may be made to apply any provision of Chapter 3 of this Act which refers to adoption orders with or without modifications (*subsection (6)*) and that if a notice of intention to adopt has been given, the regulations may impose functions in respect of the child on the authority to which the notice was given.

A person guilty of an offence under section 82 will be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum or both, or, in the event of being convicted on indictment, to up to twelve months' imprisonment or a fine, or both (*subsections (7) and (8)*).

### ***Section 83: Giving parental responsibility prior to adoption abroad***

Section 83 provides that the High Court may make an order for the transfer of parental responsibility for a child to prospective adopters who are not domiciled or habitually resident in Northern Ireland but who intend to adopt the child outside the United Kingdom, the Channel Islands or the Isle of Man. An order cannot be made where the prospective adopters meet the requirements of domicile or habitual residence to allow an adoption order to be made in Northern Ireland. Regulations will prescribe the requirements which must be satisfied before an order may be made (*subsection (3)*). An application for an order may not be made unless the child's home has been with the applicant(s) at all times during the preceding 10 weeks (*subsection (4)*). An order under this section has the same effect as an adoption order in extinguishing parental responsibility (*subsection (5)*). *Subsection (6)* provides that regulations may be made to apply any provision of this Act which refers to adoption orders to orders made under this section with or without modifications.

### ***Section 84: Restriction on taking children out***

Section 84 imposes restrictions on taking children, who are Commonwealth citizens or habitually resident in the United Kingdom, from the United Kingdom to a place outside the United Kingdom, any of the Channel Islands, and the Isle of Man for the purpose of adoption. It is an offence unless the proposed adopters have obtained an order under section 83 or the child is removed under the authority of an order under section 59 of the Adoption and Children (Scotland) Act 2007 or section 84 of the Adoption and Children Act 2002. A person will be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum, or both, or, in the event of conviction on indictment, to up to twelve months' imprisonment or an unlimited fine, or both.



### ***Section 85: Power to modify sections 82 and 84***

*Subsection (1)* provides a power to provide by regulations that section 82 does not apply if the adopters or prospective adopters are natural parents, natural relatives or guardians or if the British resident in question is a partner of the parent of the child. Subsection (1) also enables conditions to be prescribed which would need to be met for a group to be excluded from the application of section 82. Different provision can be made in relation to different cases.

*Subsection (2)* provides a power to provide that section 84(1) applies with modifications or does not apply if the prospective adopters are parents, relatives or guardians of the child (or one of them is) or the prospective adopter is a partner of a parent of the child. Again, subsection (2) enables conditions to be prescribed which would need to be met for a group to be excluded from the application of section 84 or for section 84 to be modified in relation to that group. Different provision can also be made in relation to different cases.

### ***Section 86: Declaration of special restrictions on adoptions from abroad***

Section 86 makes provision regarding the restriction of intercountry adoptions from countries where the Department has determined that it would be contrary to public policy to further the bringing of children into the United Kingdom by British residents in the cases specified in *subsection (2)*. The provisions apply equally to adoptions from countries that are signatories to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at The Hague on 29th May 1993, and those that are not.

Subsection (2) provides that the cases to which the section applies are, under paragraph (a), where a British resident wishes to bring or cause another person to bring a child who is not a British resident into the United Kingdom for the purposes of adoption by the British resident and there have been, or would have to be, some proceedings in the country that has given rise to the concern or dealings with authorities or agencies there; and, under paragraph (b), where a British resident wishes to bring or to cause another to bring a child into the United Kingdom having adopted the child abroad within 12 months of the date on which they bring the child in. The term British resident is defined in *subsection (8)*.

*Subsection (3)* provides that the suspension is achieved through a declaration made by order by the Department that ‘special restrictions’ are to apply in relation to bringing children into the United Kingdom in the cases specified in subsection (2). The Department must publish the reasons for making the declaration in relation to each restricted country (*subsection (5)*) and must publish a list of restricted countries, the ‘restricted list’, which it must keep up to date (*subsection (6)*). *Subsection (7)* requires publication of both the restricted list and the reasons in whatever way the Department thinks appropriate for bringing them to the attention of adoption agencies and members of the public.

### ***Section 87: Review***

*Subsection (1)* requires the Department to keep the restricted list under review. If the Department no longer has reason to believe that it would be contrary to public policy to further the bringing of children into the United Kingdom from a restricted country, the Department is required to revoke the order containing the declaration made in relation to that country (*subsection (2)*).

### ***Section 88: The special restrictions***

Section 88 makes provision for the special restrictions that may be applied by virtue of section 86. *Subsection (1)* provides that the Department is not to take any step which it may otherwise have taken to further the bringing of a child into the United Kingdom in the cases specified in section 86(2).

The effect of the restrictions is that the Department would no longer process intercountry adoption cases from the restricted country. The steps referred to would include, for example, the issuing of a certificate of eligibility to adopt and the forwarding of matching reports from the child's country of origin to the prospective adopters by those acting on behalf of the Department.

*Subsection (2)* also provides, however, for adoptions to be permitted to continue in exceptional cases, that is, cases where the prospective adopters or adopters are able to satisfy the Department that the adoption should proceed. *Subsection (3)* allows regulations to provide for the procedure to be followed by the Department in the consideration of exceptional cases and a non-exhaustive list of matters that must be taken into account.

### ***Cause 89: Imposition of extra conditions in certain cases***

*Subsection (1)(a)* allows regulations to be made by the Department to set out additional steps agreed between the United Kingdom and a restricted country that the Department normally takes in connection with bringing a child from the restricted country into the United Kingdom, and are not otherwise provided for by any statutory provision, to be specified in the restricted list in relation to that country. *Subsection (1)(b)* states that, where a step has been specified under subsection (1)(a), one or more conditions set out in the regulations must be met in connection with a British resident bringing a child from the relevant restricted country into the United Kingdom in either of the cases specified in section 86(2). *Subsection (2)* clarifies that such conditions are in addition to any conditions provided for by section 82 of the Act or any other statutory provision.

*Subsection (3)* provides that a person who brings, or causes another to bring, a child into the United Kingdom is guilty of an offence, if any condition required to be met by virtue of subsection (1)(b) is not met. If the step specified in the regulations has already been taken before the country was added to the restricted list, no offence would be committed (*subsection (4)*). A person would be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum, or both, or, in the event of

conviction on indictment, to up to twelve months' imprisonment or a fine, or both (*subsection(5)*).

### ***Section 90: Overseas adoptions***

Section 90 provides that for the purposes of the Act and the Adoption (Northern Ireland) Order 1987, overseas adoptions are those which are specified by regulations made by the Department describing adoptions effected under the law of any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man, and are not Convention adoptions (*subsection (1)*). *Subsection (2)* provides that regulations may prescribe the requirements that ought to be met by an adoption of any description effected after the commencement of the regulations for it to be an overseas adoption for the purposes of this Act. The regulations may contain provision as to the manner in which evidence of any overseas adoption may be given (*subsection (5)*). *Subsection (3)* imposes a duty on the Department to exercise its powers to make an order so as to secure that adoptions made after that date are not overseas adoptions if it considers that they are not likely within a reasonable time to meet the requirements prescribed by regulations.

### ***Section 91: Modification of section 66 for Hague Convention adoptions***

Section 91 provides that where the High Court, on an application, is satisfied that each of the conditions set out in *subsection (2)* are met in the case of a Convention adoption, it may direct that section 66(3) (which provides for the status conferred by adoption) does not apply or does not apply to any extent which may be specified in the direction. The reason for this provision is as follows. Adoption law of the United Kingdom recognises only one type of adoption, which is full adoption, and this creates a new and irrevocable legal relationship between the child and adoptive parents which severs all legal ties between the child and his or her birth parents. A child adopted in Northern Ireland is to be treated in law as not being the child of any person other than the adopters. In some countries, however, certain forms of adoption do not have the effect of totally severing all ties from the birth parents and these are known as simple adoptions.

Article 26 of the Hague Convention provides for the recognition of both full and simple adoptions. Article 27 of the Hague Convention allows a receiving State to convert a simple adoption into a full adoption if its law so permits and provided the birth parents and relevant parties under Article 4 of the Hague Convention have given their consent to a full adoption. Where the receiving State is Northern Ireland, the Department will ensure that in all cases the birth parents are informed of the effects of a simple adoption in Northern Ireland and seek to obtain their consent to a full adoption prior to a Convention adoption being made in a country outside the United Kingdom, Channel Islands or Isle of Man or a Convention adoption order being made here. Where the receiving State is not Northern Ireland, it is possible that the child may be brought to this country in circumstances where simple adoptions are recognised, both in the

State of origin and the receiving State, and so no consent to full adoption has been given. In those cases, the adoption will still be treated as a full adoption by operation of law, but if any issue of status arises where it is felt it would be more favourable to the child to treat the adoption otherwise than as a full adoption, an application may be made to the High Court.

***Section 92: Annulment etc. of overseas or Hague Convention adoptions***

Section 92 provides for the High Court to annul a Convention adoption or a Convention adoption order on the ground that the adoption is contrary to public policy. Where an overseas adoption or a determination under section 94 is shown to be contrary to public policy or the authority which made the adoption or determination was not competent to entertain the case, the High Court may order that the overseas adoption or determination should cease to be valid.

***Section 93: Section 92: supplementary***

Section 93 makes supplemental provision in respect of annulment of overseas or Convention adoptions and Convention adoption orders. It specifies that the application must be made in the manner and within any period as prescribed in rules of court (*subsection (1)*), that the adopted person or adopter(s) must have been habitually resident in Northern Ireland immediately before the application (*subsection (2)*), and that the court is bound by any finding of fact by the authority when determining whether that authority was competent to entertain the case (*subsection (3)*).

***Section 94: Overseas determinations and orders***

Section 94 makes further provision in relation to overseas determinations and orders. It provides that where any authority of a Convention country (other than the United Kingdom) or the Channel Islands, the Isle of Man or any British overseas territory has the power to authorise, or review the authorisation of, an adoption order made in that country or territory, or to give or review a decision revoking or annulling an adoption order or a Convention adoption, that determination will be recognised in the United Kingdom. This is subject to section 92 and any subsequent determination.

***Section 95: Power to charge***

Section 95 provides the Department with the power to charge a fee to adopters or prospective adopters for services provided or to be provided by the Department in relation to intercountry adoptions (*subsection (2)*). The Department may determine how much to charge, and may, in particular, charge a single flat fee or set different fees for different cases (*subsection (3)*), providing the fee income received, taking one financial year with another, is not greater than the cost of providing the services (*subsection (4)*). Subsection (3) also provides the Department with discretion to waive the fee in any given case.

## **Chapter 7 - Miscellaneous**

Chapter 7 restates, with amendment, the criminal offences in Articles 11 and 59 of the Adoption (Northern Ireland) Order 1987. These deal with restrictions on making arrangements for adoption and payments offered, made or received in consideration of an adoption. In addition, it introduces a new offence which deals with restrictions on preparing reports in connection with adoption. Chapter 7 also sets out who may prosecute offences under the Act.

In addition, Chapter 7 deals with proceedings in the civil courts. It aligns provision for appeals from the county court, with the procedure in the Children (Northern Ireland) Order 1995 and makes provision about the hearing and reporting of proceedings under the Act. New provision is made to impose an obligation on the courts when dealing with proceedings for an adoption or placement order to draw up a timetable to ensure that the matter is dealt with without delay. In addition, provision is made for the appointment of Children's Court Guardians (previously known as Guardians ad Litem). The Act gives a new right to such officers, in connection with the hearings with which they are involved, to inspect records held by an adoption agency.

This Chapter also provides for recognition in Northern Ireland of adoption orders made in England and Wales, Scotland, the Channel Islands and the Isle of Man.

### **Section 96: Restriction on arranging adoptions etc.**

Section 96 sets out the steps in relation to arranging an adoption that must not be taken by a person who is not an adoption agency or a person acting in pursuance of an order of the High Court. *Subsection (2)* lists nine steps that should not be taken, for example seeking, offering or placing a child for adoption. *Subsections (3) and (4)* provide that certain steps do not apply where one or both of the prospective adopters are parents, relatives or guardians of the child, or where a prospective adopter is a partner of a parent. *Subsection (6)* enables the Department to make an order amending subsections (1) to (4) where it considers an amendment necessary or expedient. This power could be used, for example, to specify additional steps for inclusion in the list in subsection (2) to further protect the interests and welfare of children or other parties affected by adoption. *Subsection (5)* allows regulations to be made prescribing who should be treated as an adoption agency in respect of intercountry adoption for the purpose of this provision.

### **Section 97: Offence of breaching restrictions under section 96**

Section 97 provides that where a person contravenes section 96(1) they are guilty of an offence. It also provides that if the offender is an adoption society, the person who manages the society is also guilty of the offence. Defences are provided in *subsections (2) to (4)*. *Subsection (5)* sets out that the penalty on summary conviction is imprisonment for a term not exceeding six months or a fine not exceeding £10,000, or both.

### ***Section 98: Restriction on reports***

Section 98 provides restrictions on the preparation of certain reports in connection with adoption. *Subsection (1)* provides a regulation making power so that a person who is not within a prescribed description may not, in any prescribed circumstances, prepare a report for any person about the suitability of a child for adoption or of a person to adopt a child or about the adoption, or placement for adoption, of a child. The intention is to use this power to regulate the preparation of assessment, post-placement and post-adoption reports and to ensure that only suitably skilled or professionally qualified staff carry out the necessary evaluations and report writing. *Subsection (2)(a)* provides that an offence is committed if a person contravenes subsection (1). *Subsection (2)(b)* provides that an offence is committed where someone causes a person to prepare a report or submits to any person a report which has been prepared in contravention of subsection (1). *Subsection (3)* provides that where an offence is committed by a person who works for an appropriate voluntary organisation, the manager of that appropriate voluntary organisation is also guilty of the offence. A defence for a person charged with an offence under subsection (2)(b) is provided by *subsection (4)*. *Subsection (5)* sets out the penalty on summary conviction where an offence is committed as imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

### ***Section 99: Prohibition of certain payments***

Section 99 prohibits certain payments or rewards in connection with the adoption of a child. *Subsection (1)* provides that this section applies to any payment (other than an excepted payment as set out in section 100) which is made for the adoption of a child, giving any consent for the child's adoption, or the removal from the United Kingdom of a child who is a Commonwealth citizen, or is habitually resident in the United Kingdom, to a place outside the United Kingdom, the Channel Islands or the Isle of Man for the purpose of adoption. Subsection (1) also applies to any payment in connection with certain steps taken to arrange an adoption, and the commissioning or preparation of reports where it would contravene section 98(1).

*Subsection (3)* provides that an offence is committed where a person makes any payment to which this section applies, agrees or offers to make any such payment, or receives or agrees to receive or attempts to obtain any such payment. *Subsection (4)* provides the penalty on summary conviction where an offence is committed as imprisonment for a term not exceeding six months or a fine not exceeding £10,000, or both.

### ***Section 100: Excepted payments***

Section 100 provides that payments may be excepted in certain circumstances. The intention is to allow payments to be made for reasonable expenses, such as legal and medical expenses in relation to an adoption, payments to an adoption agency for expenses incurred for arranging for the adoption of a child whose



country of origin is outside the United Kingdom, or for reasonably incurred travel and accommodation expenses where a child is being taken out of the United Kingdom for the purpose of adoption as permitted by section 84(2).

*Subsection (1)* provides that a payment is an excepted payment if it is made in compliance with a provision under this Act, the Adoption and Children (Scotland) Act 2007 or the Adoption and Children Act 2002. The payment of reasonable expenses incurred in connection with an adoption, proposed or actual, to an adoption agency is excepted by *subsection (2)* if it is made by a parent or guardian of a child, or by a person who adopts or proposes to adopt a child. *Subsection (3)* provides that a payment for legal or medical expenses is an excepted payment if it is incurred by a person in respect of an application to a court for an adoption order, a placement order, or an order under section 23 (Contact), section 49 (Post-adoption contact) or section 83 (Giving parental responsibility prior to adoption abroad). *Subsection (4)* provides that a payment made where a child is removed from the United Kingdom for the purpose of adoption is an excepted payment if the condition in section 84(2) is met, and the payment is made for reasonably incurred travel and accommodation expenses.

#### ***Section 101: Sections 96 to 100: interpretation***

Section 101 provides interpretation in respect of the provisions in sections 96 to 100.

#### ***Section 102: Pre-commencement adoptions: information***

Section 102 amplifies the regulation-making power in section 9 to provide that the Department may make regulations in connection with adoptions made before the appointed day (i.e. before the commencement of sections 55 to 64).

*Subsection (1)* provides that regulations may make provision for assisting persons adopted before the appointed day and their natural parent(s) to obtain information about that adoption; and for facilitating contact between them and their relatives.

*Subsection (2)* enables regulations to make provision enabling intermediary services to be provided for the purpose of facilitating contact between people with a prescribed relationship to an adopted person and the adopted person's natural relatives.

It is intended that regulations will provide for a system in which adoption agencies registered to provide intermediary services may, on application by an adult who was adopted under a pre-commencement adoption, a natural relative, or a person with a prescribed relationship to an adopted person, act as intermediaries and, with the informed consent of the adopted person, facilitate contact between the adopted person and their relatives. It is envisaged that in performing this role adoption agencies will be obliged, where an adoption agency arranged the adoption, to seek advice and information from that agency. It is also envisaged that the adoption agency is to be able to obtain information

held by the Registrar General, where this is necessary in order to perform their intermediary function.

*Subsection (3)* enables regulations to make provision for the purpose of authorising or requiring adoption agencies in prescribed circumstances to disclose or provide access to prescribed information relating to pre-commencement adoptions. This will provide scope to include all provision relating to the disclosure of, and access to, pre-commencement adoption information together in one set of Regulations, rather than continuing to rely on the Adoption Agencies Regulations (Northern Ireland) 1989.

It is intended that the regulations made under *subsections (4) and (5)(a)* will set out the circumstances when adoption agencies and the Registrar General are to be able or required to disclose information to each other. For example, an adoption agency is to be authorised to disclose information to the Registrar General. The Registrar General is required to disclose tracing information to the adoption agency.

Provision is made under *subsection (5)(b)* for regulations to be made authorising or requiring the court to disclose information to an adoption agency.

*Subsection (6)* makes express provision for regulations to impose conditions on the disclosure of information under this section, including conditions restricting its further disclosure, so that identifying information is properly protected, for example to ensure that the appropriate consent is in place before any disclosure is made.

Regulations may be made under subsection (3) of section 9 for unauthorised disclosure of the information provided for by section 102 to be a criminal offence punishable on summary conviction with a maximum level 5 fine.

*Subsection (7)* provides that regulations may authorise the charging of prescribed fees for the disclosure of information by adoption agencies, the Registrar General and the court. It also provides that an adopted person may not be required to pay any fee in respect of information disclosed to them or to which they have been granted access.

*Subsection (8)* provides that an authorisation or requirement made under subsection (3) or (5)(a), has effect, in spite of any restriction on the disclosure of information in Chapter 5 relating to the Registers. *Subsection (9)* requires the approval of the Department of Finance to the making of regulations under subsections (4) to (7) which relate to the Registrar General. *Subsection (10)* defines terminology used in this section.

### ***Section 103: Proceedings for offences***

Section 103 sets out that proceedings for offences under sections 9 and 58 are ordinarily to be brought by the Regulation and Quality Improvement Authority. Such offences can only be prosecuted by another body with the written consent of the Director of Public Prosecutions for Northern Ireland.

### **Section 104: Appeals**

*Subsection (1)* provides that an appeal lies to the High Court against the making by a County Court of any order under this Act or any refusal by a County Court to make such an order as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 and the appeal were brought under Article 60 of that Order.

*Subsection (2)* provides that, on an appeal under subsection (1), the High Court may make such orders as necessary to give effect to its determination of the appeal. The High Court may also make such incidental or consequential orders as appear to it to be just (*subsection (3)*).

*Subsection (4)* provides that any order of the High Court made on an appeal under subsection (1) (other than one directing that an application be re-heard by the county court) is to be treated, for the purposes of the enforcement of the order and any power to vary, revive or discharge orders, as if it were an order of the County Court from which the appeal was brought and not an order of the High Court.

Subsections (1) to (4) are subject to Article 166(14) and (15) of the Children Order (*subsection (5)*).

### **Section 105: Privacy**

Section 105 provides that rules of court may make provision for the court to sit in private in any proceedings under the Adoption and Children Act. *Subsection (3)* aligns the protection for the privacy of children concerned in proceedings under Article 170 of the Children Order and the Act.

### **Section 106: Children's court guardians**

*Subsection (1)* provides that for the purposes of any relevant application (defined in *subsection (5)* for the making, varying or revoking of a placement order or a contact order under section 23, or the making of an adoption order or a parental responsibility order under section 83), rules of court must provide for the appointment of a children's court guardian in prescribed cases. *Subsection (2)* provides that rules may provide for the children's court guardian to act on behalf of the child, to safeguard the interests of the child in a prescribed manner, prepare reports on matters relating to the child's welfare and perform other prescribed functions. *Subsection (3)* provides that the report must include any matter prescribed by rules (unless the court orders otherwise) and must be made in the manner required by the court. *Subsection (4)* sets out who should not be appointed as a children's court guardian under subsection (1). Rules of court may make provision as to the assistance which the court may require a children's court guardian to give to it (*subsection (6)*).

*Subsection (8)* provides how children's court guardians are to be appointed under this section. The Department may by regulations provide that children's court

guardians must be selected from persons employed or approved by such special agency or other public body as may be prescribed.

Subsection (8) is not to be taken to prejudice the power of the Lord Chief Justice to confer or impose duties on the Official Solicitor under section 75(2) of the Judicature (NI) Act 1978 (*subsection (9)*).

*Subsection (10)* provides that the regulations may in particular make provision for the employment or approval of persons by such special agency or other public body as may be prescribed, the qualifications for appointment as a children's court guardian, the training to be given to children's court guardians and for monitoring the work of children's court guardians. A "public body" is defined in section 159 as a body established by or under any statutory provision. The Department may, with the approval of Department of Finance, make such grants as the Department considers appropriate with respect to expenditure incurred under regulations made under subsection (8) (*subsection (11)*).

### ***Section 107: Right of access to adoption agency records***

The powers of a children's court guardian have been extended under section 107 of the Act, which creates a right at all reasonable times for a children's court guardian appointed under section 106(1) to examine and take copies of any records of, or held by, an adoption agency relating to a proposed or actual application under Part 1 of the Act in respect of the child concerned. Any copy of such a document (or part of a document) will be admissible as evidence of any matter referred to in any evidence that the children's court guardian may give in the proceedings or any report the children's court guardian makes to the court in those proceedings. A children's court guardian appointed under Article 60 of the Children Order already has the right to access records held by an authority in connection with specified proceedings under that Order (Article 61 refers). Section 107 provides an equivalent right to access adoption agency records.

### ***Section 108: Evidence of consent***

Section 108 provides for a document signifying consent to be admissible in evidence without any further proof of the signature of the person who executed it when the document has been witnessed in accordance with rules of the court.

### ***Section 109: Effect of certain Scottish orders and provisions***

*Subsection (1)* provides that a Scottish adoption order or an interim adoption order will have the same effect in Northern Ireland as it has in Scotland. *Subsection (2)* provides that Scottish permanence orders which include provision granting authority for a child to be adopted are to have effect in Northern Ireland as they do in Scotland. *Subsection (3)* provides for it to be an offence in Northern Ireland to contravene the restrictions on removing a child who is living with prospective adopters where the adoption has been agreed or where the person applying for adoption has provided the home (the provisions in sections 20 - 22 of the Adoption and Children (Scotland) Act 2007). The penalty,

set out in subsection (3), is three months' imprisonment or a fine not exceeding level 5 on the standard scale, or both.

*Subsection (5)* allows for orders made under section 24 of the Adoption and Children (Scotland) Act 2007 (return of child removed in breach of certain provisions) to have effect in Northern Ireland as if they were orders of the High Court under section 37 of this Act (recovery orders).

### ***Section 110: Effect of certain orders made in England and Wales***

Under section 110, an adoption order or placement order (including the variation or revocation of a placement order), a contact order or a recovery order made in England and Wales has the same effect in Northern Ireland. If a child is placed for adoption, or an adoption agency is authorised to place a child for adoption, with parental consent under the Adoption and Children Act 2002, the relevant provisions concerning parental responsibility also have effect in Northern Ireland.

*Subsection (2)* sets out that it is an offence for an individual to contravene any of the provisions of the Adoption and Children Act 2002 mentioned in *subsection (3)* and the penalties attached to such an offence. *Subsection (3)* specifies provisions for prohibitions and restrictions on removal of a child.

### ***Section 111: Use of adoption records from Great Britain, etc.***

Section 111 allows any document that can be used as evidence in England and Wales, Scotland, the Isle of Man, or any of the Channel Islands, under the provisions set out in this section, to also be used as evidence of that matter in Northern Ireland.

### ***Section 112: Channel Islands and the Isle of Man***

Section 112 enables regulations made under *subsection (1)* to provide for:

- orders that are made by a court in the Isle of Man or any of the Channel Islands, and appear to correspond to orders made under a provision of the Act, to be given effect in Northern Ireland (*subsection (1)(a)*);
- any reference in the Act to an adoption agency to include an adoption agency in the Isle of Man or any of the Channel Islands (*subsection (1)(b)*);
- a reference in the Act to other legislation, such as the Children Order, to include reference to corresponding legislation of the Isle of Man or any of the Channel Islands (*subsection (1)(c)*). An example would be where there is a reference to a care or supervision order made under the Children Order;
- a reference in the Act to the United Kingdom or to Great Britain to also include the Isle of Man or any of the Channel Islands (*subsection (1)(d)*).

*Subsection (2)* enables regulations to modify any provision of the Act as it applies to an order made by a court in the Isle of Man or any of the Channel

Islands or to anything done under the law of the Isle of Man or any of the Channel Islands.

***Section 113: Avoiding delay***

Section 113 is intended to avoid delay in the court process. *Subsection (1)* imposes an obligation on the court, where it is dealing with any matter where the issue of whether a placement or adoption order should be made, or any other question with respect to such an order, to draw up a timetable and give any directions that are necessary to ensure that that timetable is adhered to.

Rules of court may prescribe periods within which steps must be taken in relation to such proceedings and make other provision with respect to such proceedings for the purpose of ensuring that such questions are determined without delay (*subsection (2)*).

***Section 114: Service of notices etc.***

*Subsection (1)* provides that any notice or information required to be given under the Act may be given by post. *Subsection (2)* provides that *section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents)* is to have effect as if in *subsection (1)* the word “registering” is omitted.

***Section 115: Jurisdiction of courts***

Section 115 provides that “court” in the Act means the High Court or a county court (*subsection (1)*). This is subject to any provision made by or under Schedule 7 to the Children Order. The Department of Justice may, after consulting the Lord Chief Justice, make an order to provide for courts of summary jurisdiction to be included among the courts who may hear proceedings under this Part (*subsection (4)*).