

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: *Adoption and Children Act (Northern Ireland) 2022, Cross Heading: Preliminaries to adoption is up to date with all changes known to be in force on or before 27 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



2022 CHAPTER 18

PART 1

Adoption

CHAPTER 3

Placement for adoption and adoption orders

PROSPECTIVE

Preliminaries to adoption

Child to live with adopters before application

- 39.—**(1) An application for an adoption order may not be made unless—
- (a) if subsection (2) applies, the condition in that subsection is met;
 - (b) if that subsection does not apply, the condition in whichever is applicable of subsections (3) to (5) applies.
- (2) If—
- (a) the child was placed for adoption with the applicant or applicants by an adoption agency or in pursuance of an order of the High Court; or
 - (b) the applicant is a parent of the child,

the condition is that the child's home must have been with the applicant or, in the case of an application by a couple, with one or both of them at all times during the period of ten weeks preceding the application.

(3) If the applicant or one of the applicants is the partner of a parent of the child, the condition is that the child's home must have been with the applicant

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or, as the case may be, applicants at all times during the period of one year preceding the application.

(4) If the applicants are authority foster parents, the condition is that the child's home must have been with the applicants at all times during the period of one year preceding the application.

(5) In any other case, the condition is that the child's home must have been with the applicant or, in the case of an application by a couple, with one or both of them for not less than three years (whether continuous or not) during the period of five years preceding the application.

(6) But subsections (4) and (5) do not prevent an application being made if the court gives leave to make it.

(7) An adoption order may not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a couple, both of them together in the home environment have been given—

- (a) where the child was placed for adoption with the applicant or applicants by an adoption agency, to that agency;
- (b) in any other case, to the adoption authority within whose area the child's home is.

(8) In this section and sections 40 and 41(1)—

- (a) references to an adoption agency include an adoption agency within the meaning of section 2(1) of the Adoption and Children Act 2002 or Scottish adoption agency within the meaning of 144(3) of that Act;
- (b) references to a child placed for adoption by an adoption agency are to be read accordingly.

Commencement Information

II S. 39 not in operation at Royal Assent, see [s. 160\(1\)](#)

Reports where child placed by agency

40.—(1) Where an application for an adoption order relates to a child placed for adoption by an adoption agency, the agency must—

- (a) submit to the court a report on the suitability of the applicants and on any other matters relevant to the operation of section 1; and
- (b) assist the court in any manner the court directs.

(2) Arrangements may be made by an adoption agency which has placed a child for its functions in relation to that child with respect to—

- (a) the report on the suitability of the applicants for adoption; and

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(b) any other matters relevant to the operation of section 1, to be discharged by another adoption agency.

Commencement Information

I2 S. 40 not in operation at Royal Assent, see **s. 160(1)**

Notice of intention to adopt

41.—(1) This section applies where persons (referred to in this section as “proposed adopters”) wish to adopt a child who is not placed for adoption with them by an adoption agency.

(2) An adoption order may not be made in respect of the child unless the proposed adopters have given notice to the appropriate adoption authority of their intention to apply for the adoption order (referred to in this Act as a “notice of intention to adopt”).

(3) The notice must be given not more than two years, or less than three months, before the date on which the application for the adoption order is made.

(4) Where—

(a) if a person were seeking to apply for an adoption order, subsection (4) or (5) of section 39 would apply; but

(b) the condition in the subsection in question is not met,

the person may not give notice of intention to adopt unless the person has the court’s leave to apply for an adoption order.

(5) On receipt of a notice of intention to adopt, the appropriate adoption authority must arrange for the investigation of the matter and submit to the court a report of the investigation.

(6) In particular, the investigation must, so far as practicable, include the suitability of the proposed adopters and any other matters relevant to the operation of section 1 in relation to the application.

(7) If an adoption authority receives a notice of intention to adopt in respect of a child who the adoption authority knows was (at any time before the notice was given) looked after by another adoption authority, the first adoption authority must, not more than seven days after the receipt of the notice, inform the other adoption authority in writing that it has received the notice.

(8) Where—

(a) an adoption authority has placed a child with any persons otherwise than as prospective adopters; and

(b) the persons give notice of intention to adopt,

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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).

(9) In this section, references to the appropriate adoption authority, in relation to any proposed adopters, are—

- (a) in prescribed cases, references to the prescribed adoption authority;
- (b) in any other case, references to the adoption authority for the area in which, at the time of giving the notice of intention to adopt, the proposed adopters have their home.

Commencement Information

I3 S. 41 not in operation at Royal Assent, see [s. 160\(1\)](#)

Suitability of adopters

42.—(1) Regulations under section 9 may make provision as to the matters to be taken into account by an adoption agency in determining, or making any report in respect of, the suitability of any persons to adopt a child.

(2) In particular, the regulations may make provision for the purpose of securing that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship.

(3) Nothing in subsection (1) or (2) affects the application of section 1.

Commencement Information

I4 S. 42 not in operation at Royal Assent, see [s. 160\(1\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by S.I. 2018/412, Sch. 3 (as substituted) by [2022 c. 18 \(N.I.\) Sch. 3 para. 83](#)