

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: ADOPTION AND CONTACT

Adoption

Section 1: Contact between prescribed persons and adopted person's relatives

51. This section amends section 98(1) of the Adoption and Children Act 2002 (“the 2002 Act”). Section 98(1) of the 2002 Act allows regulations to be made to facilitate contact between persons adopted before 30 December 2005 (when the 2002 Act came into force) and their birth relatives, Section 1 extends this regulation making power so that regulations can also make provision to facilitate contact between persons with a prescribed relationship to a person adopted before 30 December 2005 and the adopted person's birth relatives.
52. Persons prescribed under these regulations will include the direct line of descendants of the adopted person (i.e. children, grandchildren) but the Department for Education intends to consult on whether it is appropriate for others, such as spouses and siblings of descendants, to be able to access the same services.

Section 2: Placement of looked after children with prospective adopters

53. This section amends section 22C of the Children Act 1989 as it applies in relation to England. New *subsection (9A)* imposes a duty on a local authority looking after a child, when they are considering adoption for the child, or are satisfied that the child ought to be placed for adoption but are not authorised to place that child for adoption, to consider placing the child in a “Fostering for Adoption” placement.
54. A “Fostering for Adoption” placement is a foster placement with foster parents who are also approved prospective adopters, in circumstances where the local authority are considering adoption as an option for the child's long term care (whether it is the only option they are considering, or one of several) or are satisfied that the child ought to be placed for adoption but do not yet have authorisation to place the child for adoption. In these circumstances the local authority will be under a duty to consider a “Fostering for Adoption” placement. Section 22C(5) of the Act will apply, and requires the local authority to place the child in “the most appropriate placement available”, and section 22 of the Act will apply in relation to the decision about which placement is most appropriate, and will require the authority to act in the child's best interests. The local authority must first have considered placing the child with relatives, friends or other connected persons and have ruled them out as not being the most appropriate potential carers for the child.

Section 3: Repeal of requirement to give due consideration to ethnicity: England

55. This section amends section 1 of the 2002 Act so that *subsection (5)* does not apply in relation to local authorities in, and registered adoption societies whose principal

office is in, England. Section 1(5) of that Act requires adoption agencies to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when placing him or her for adoption.

56. Adoption agencies are required by section 1(2) and (4) of that Act to make a child's welfare throughout his or her life their paramount consideration, and to have regard to a range of matters, including the child's needs, wishes and feelings, and his or her background and other relevant characteristics, in reaching a placement decision. These provisions, therefore, mean that the adoption agency is already and will remain under a duty to have regard to the child's religious persuasion, racial origin and cultural and linguistic background, amongst other factors, where relevant. An adoption agency is also required by section 1(3) of that Act to bear in mind that any delay in coming to a decision is likely to prejudice the child's welfare.
57. The amendment to *subsection (5)* is intended to avoid any suggestion that the current legislation places a child's religious persuasion, racial origin and cultural and linguistic background above the factors in section 1(2) to (4).

Section 4: Recruitment, assessment and approval of prospective adopters

58. This section inserts a new section 3A into the 2002 Act. Section 3 of that Act requires each local authority to maintain within their area an adoption service designed to meet the needs, in relation to adoption, of, and provide facilities for: 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. Local authorities may provide those facilities by securing their provision by other local authorities and registered adoption societies (defined in section 2(2) of the 2002 Act). Only local authorities and registered adoption societies may make arrangements for adoption (sections 92 and 94 of the 2002 Act).
59. The new section 3A provides a new power for the Secretary of State to direct one or more named local authorities in England, or one or more descriptions of local authority in England, to make arrangements for all or any of their functions in relation to the recruitment of persons as prospective adopters; the assessment of prospective adopters' suitability to adopt a child; and the approval of prospective adopters as suitable to adopt a child, to be carried out on their behalf by one or more other adoption agencies (other local authorities or voluntary adoption agencies).
60. The new section 3A also provides a new power for the Secretary of State to require, by order, all local authorities in England to make arrangements for all or any of their functions in relation to the recruitment of persons as prospective adopters; the assessment of prospective adopters' suitability to adopt a child; and the approval of prospective adopters as suitable to adopt a child, to be carried out on their behalf by one or more other adoption agencies (other local authorities or voluntary adoption agencies). Such an order is subject to the affirmative resolution procedure and cannot be made before 1 March 2015.

Section 5: Adoption support services: personal budgets

61. This section inserts a new section 4A into the 2002 Act to make provision enabling local authorities to prepare personal budgets for adoption support services. A personal budget is an amount to be made available to secure particular adoption support services and provides a way of involving an adopted person or the parent of an adopted person ("the recipient") in securing those services.
62. Personal budgets may take the form of direct payments, where families can purchase the services themselves, notional personal budgets, which families can prepare with the local authority and which the local authority can spend on their behalf at their direction, or a combination of both.

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63. Section 4A(2) requires local authorities to prepare a personal budget with respect to adoption support services for a recipient upon request. This only applies where the local authority has, following an assessment under section 4 of the 2002 Act, decided to provide adoption support services (*subsection (1)(a)*).
64. The local authority prepare a personal budget where they identify an amount as available to secure the adoption support services that they have decided to provide, with a view to the recipient being involved in securing those services (section 4A(3)).
65. Section 4A(4) enables regulations to be made to make detailed provision about personal budgets, including for direct payments to be made to the recipient in order for the recipient to secure the service, the provision of information, support and advice in connection with personal budgets and direct payments, and when, to whom and on what conditions direct payments may or may not be made. The first set of regulations made under section 4A(4) will be subject to the affirmative resolution procedure (section 4A(7)).
66. If regulations authorise direct payments to be made to an adoptive parent or an adopted child they must require them to consent before the direct payment can be made. They must also require local authorities to stop making direct payments where that consent is withdrawn (section 4A(5)).
67. Any adoption support services that are secured by means of direct payments will be treated as adoption support services provided by the local authority (section 4A(6)).

Section 6: Adoption support services: duty to provide information

68. This section inserts a new section 4B into the 2002 Act.
69. Section 4B(1) places a new duty on local authorities in England to provide a range of information about adoption support services and other prescribed information to any person who has contacted the local authority to request information about adopting a child, or has informed the local authority that they wish to adopt a child. Local 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 a local authority does not need to provide the information.
70. Section 4B(2) sets out the information that the local authority must provide including information about the adoption support services available in their area and information about assessments for adoption support services. It also makes provision for regulations to prescribe other information that must be provided by the local authority.

Section 7 and Schedule 1: The Adoption and Children Act Register

71. This section amends the provisions in the 2002 Act that provide for the establishment of an Adoption and Children Act Register (“the register”) of children suitable for adoption and prospective adopters who are suitable to adopt a child.
72. *Subsection (2)* amends section 125(1)(a) of the 2002 Act to allow for the inclusion in the register of prescribed information about children who are being considered for adoption by an English local authority. This is intended to enable details of looked after children to be included in the register where the local authority are considering adoption as an option for them, or they are satisfied that the child ought to be placed for adoption but they are not authorised to do so either by parental consent or a placement order. These children may be placed with local authority foster parents who are also approved prospective adopters under new section 22C(9A) of the Children Act 1989 (see section 2). This subsection also amends section 125(3) of the 2002 Act to remove any doubt that the restriction is subject to regulations made under section 128A (as inserted by *subsection (4)*).

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73. A new section 125(1A) is inserted into the 2002 Act to provide that regulations may enable the register to contain prescribed information about children that Welsh, Scottish or Northern Irish adoption agencies are satisfied are suitable for adoption and prospective adopters that they are satisfied are suitable to adopt a child (*paragraph 2(3)* of Schedule 1).
74. *Subsection (3)* amends section 128(4)(b) of the 2002 Act to provide that consent needs to be given by a prescribed person if information about a child who is being considered for adoption by an English local authority is to be disclosed to the Secretary of State or the registration organisation.
75. *Subsection (4)* inserts a new section 128A into the 2002 Act, which provides for regulations to allow for the search and inspection of the register by prospective adopters who are suitable to adopt a child to enable them to identify a child on the register for whom they might be appropriate adopters. A prospective adopter is suitable to adopt a child if an adoption agency is satisfied that they are suitable to have a child placed with them for adoption (section 131(2)(b)). The regulations may restrict access to certain parts of the register only, or only to specified content on the register (*subsection (2)* of section 128A) and the regulations may also set out terms and conditions of access to the register (*subsection (3)* of section 128A). *Subsection (4)* of section 128A provides that regulations may prescribe the steps that prospective adopters must follow in relation to the information they have received through their search of the register. *Subsection (5)* of section 128A provides that the regulations may prescribe the payment of a fee to the Secretary of State or the registration organisation by the prospective adopters for the searching or inspecting of the register. The first set of regulations made under section 128A will be subject to the affirmative resolution procedure (*subsection (6)* of section 128A).
76. Section 129(1) of the 2002 Act is amended to provide that information entered in the register, or compiled from information entered in the register, may also be disclosed under the regulations made under section 128A of the 2002 Act (*paragraph 6* of Schedule 1). *Paragraph 6* of Schedule 1 inserts a new section 129(2A) which provides for regulations to permit the disclosure of prescribed information entered in the register or compiled from information entered in the register to adoption agencies in England, Wales, Scotland and Northern Ireland and to the registers in Scotland, Wales and Northern Ireland. Section 129(4) is amended to provide that regulations may prescribe the steps to be taken by adoption agencies in respect of information disclosed to them under new section 129(2A) and section 129(7) is amended to provide that regulations may require Welsh, Scottish or Northern Irish adoption agencies, as well as adoption agencies in England, to pay a prescribed fee in prescribed circumstances and to provide that the regulations may require any person to whom information is disclosed under new section 129(2A) to pay a prescribed fee.
77. *Subsection (5)* amends section 129(2)(a) to provide that prescribed information entered in the register may be disclosed where an adoption agency in England is acting on behalf of a child for whom they are considering adoption.
78. *Subsection (6)* amends section 140(7) to provide that subordinate legislation made under the 2002 Act may make different provision for different areas. This will enable the regulations made under section 128A to apply in certain local authority areas only.
79. *Subsection (7)* inserts a new *subsection (6A)* into section 97 of the Children Act 1989 to provide that entering information on the register under section 125 of the 2002 Act or accessing information, in accordance with any regulations made under the new section 128A of the 2002 Act, would not be an offence under section 97 of the 1989 Act.
80. *Subsection (8)* introduces Schedule 1 which amends the 2002 Act to provide for the removal of the requirement to make provision for the register by Order in Council, and for that register not to apply to Wales or Scotland.

Contact

Section 8: Contact: children in care of local authorities

81. Section 34 of the Children Act 1989 provides that where a child is in the care of the local authority the authority must allow the child reasonable contact with their parents or guardians, or certain other persons specified in section 34(1). Local authorities are also required, under *paragraph 15* of Schedule 2 to that Act, to endeavour to promote contact between all looked after children and those persons listed in *paragraph 15(1)*, including the child's parents and other relatives of the child, like grandparents or siblings. This section makes amendments to both of these provisions.
82. *Subsection (2)* amends section 34(1) to make it clear that the local authority's duty to allow reasonable contact between a child in the care of the local authority and those people listed in section 34(1)(a) to (d) is subject to the local authority's duty to safeguard and promote the welfare of looked after children under section 22(3)(a) of the Children Act 1989. If allowing contact with any of those persons would not safeguard and promote the welfare of the child, the local authority should not allow the contact.
83. *Subsection (4)* enables the Secretary of State to make secondary legislation setting out in more detail the matters that the local authority should consider when determining whether contact between the child and any of the people mentioned in section 34(1) is consistent with safeguarding and promoting the child's welfare.
84. *Subsection (3)* inserts a new *subsection (6A)* into section 34 to provide that where a local authority in England is refusing contact under section 34(6) with any of the persons listed in section 34(1)(a) to (d), or where a local authority has obtained a court order under section 34(4) authorising them to refuse contact with any of those persons, the duty in *paragraph 15(1)* of Schedule 2 no longer applies.
85. *Section 34(11)* provides that before making a care order with respect to any child the court has to consider the contact arrangements that the local authority has made or proposes to make and invite the parties to the proceedings to comment on those arrangements. *Subsection (5)* amends that subsection to provide that the court's duties also apply before the court makes, varies or discharges an order under section 34.

Section 9: Contact: post-adoption

86. This section inserts new sections 51A and 51B into the 2002 Act which provide 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 section 51A(3).
87. Section 51A provides that orders under that 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.
88. When making the adoption order or at any time afterwards the court may either make an order for contact under section 51A(2)(a) or an order prohibiting contact under section 51A(2)(b). The court may also, when making an adoption order, make an order under section 51A(2)(b) prohibiting contact on its own initiative (section 51A(6)).
89. Section 51A(3) prescribes the persons that may be made subject to an order under section 51A. These include former relatives and guardians of the child, amongst others, as well as any person who has lived with the child for at least one year. Section 51A(7) provides that the one year period need not have been continuous but must not have started more than five years before the application for an order under section 51A was made.
90. Under section 51A(4) the child, the person who has applied for the adoption order or the child's adoptive parents may make an application for an order under section 51A

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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.

91. Section 51A(5) sets out the factors 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 them by the child, the person who has applied for the adoption order or the child's adoptive parents.
92. Section 51A(8) provides that where section 51A applies, an order under section 8 of the Children Act 1989 may not provide for contact between the child and anyone who might be named in a section 51A order. Section 26(5) of the 2002 Act is also repealed (by *subsection (3)*) to ensure that no application for a contact order under section 8 of the Children Act 1989 may be made at the same time as an application for an adoption order.
93. An order under section 51A 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 51A and has effect until the child's 18th birthday (section 51B(1)).
94. Section 51B(4) sets out what rules of court may specify and section 51B(3) provides that the court must, in the light of any rules made, draw up a timetable in relation to orders under section 51A and give directions for ensuring, so far as is reasonably practicable, that any timetable is adhered to.
95. Section 1(7) of the 2002 Act is amended to provide that it applies to orders made under section 51A (*subsection (2)*). This means that the requirements of section 1(2) to (4) of that Act, for example, that the welfare of the child must be the court's paramount consideration, apply when the court is considering making an order under section 51A.
96. Section 96(3) of the 2002 Act is amended to provide that it is not an offence under section 95 of that Act (which prohibits certain payments relating to adoption) to make payments for legal and/or medical expenses in relation to an application for a section 51A order (*subsection (4)*).
97. Section 1(1) of the Family Law Act 1986 ("the 1986 Act") is amended to ensure that a section 51A order is classed as a "Part 1 Order" for the purposes of Part 1 of that Act (*subsection (5)*). This enables section 51A orders to be recognised and enforced throughout the UK. Section 2 of the 1986 Act is amended to provide for the circumstances in which a court in England and Wales shall have jurisdiction to make an order under section 51A of the 2002 Act (*subsection (6)*).
98. Section 9 of the Children Act 1989 is amended to provide that a court must not make a specific issue or prohibited steps order when the same result could be achieved by making an order under section 51A (*subsection (7)*). This makes the position with regards to orders under section 51A consistent with the previous position in relation to residence and contact orders.
99. A number of sections of the Armed Forces Act 1991 ("the 1991 Act") are amended to add references to any person in whose favour an order under section 51A of the 2002 Act is in force with respect to the child, alongside references to any person named in a child arrangements order which regulates contact (under section 8 of the 1989 Act) (*subsections (8), (9), (10) and (11)*).
100. Paragraphs 12(9)(p) and 13(1)(g) of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are amended to ensure that adoption related contact orders under section 51A of the 2002 Act are within the scope of civil legal aid in the same way as orders under section 8 of the Children Act 1989.