



Draft legislation on Adoption: Early Permanence through 'Fostering for Adoption' and Matching for Adoption

Presented to Parliament
by the Secretary of State for Education
by Command of Her Majesty

November 2012

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Foreword

The Government aims to reform the adoption system to remove barriers and reduce delay so that all children for whom adoption is in their best interests can be placed quickly with adoptive families.

The Government published *An Action Plan for Adoption: Tackling Delay* in March 2012 which set out proposals to speed up the adoption process, including by proposing changes to legislation. One commitment made in that document was to reduce delay caused by the search for a perfect or near perfect ethnic match for a child. In July 2012, the Prime Minister announced proposals to introduce a new legal duty for “*Fostering for Adoption*”. This is to encourage local authorities to place children with their potential permanent carers more swiftly.

These changes would reduce the time children have to wait for an adoptive placement and enable more children to be placed in stable, loving homes with less delay and disruption. This would improve their chances of leading full and happy lives.



Edward Timpson MP

Parliamentary Under Secretary of State for Children and Families

1 Placement of looked after children with prospective adopters

- (1) Section 22C of the Children Act 1989 is amended as follows.
- (2) In subsection (2), for “subject to subsection (4)” substitute “subject to subsections (4) and (9B)”.
- (3) In subsection (5), after “most appropriate placement available” insert “(but subject to subsection (9B))”.
- (4) In subsection (7), after “most appropriate placement for C” insert “under subsection (5)”.
- (5) After subsection (9) insert –
 - “(9A) Subsection (9B) applies where the local authority are a local authority in England and –
 - (a) are satisfied that C ought to be placed for adoption,
 - (b) have decided that C ought to be placed for adoption with a person who is a local authority foster parent and has been approved as a prospective adopter, and
 - (c) are not authorised to place C for adoption.
 - (9B) The local authority must place C with the local authority foster parent mentioned in subsection (9A)(b), unless in their opinion it would be more appropriate –
 - (a) to make arrangements for C to live with a person falling within subsection (3), or
 - (b) to place C in a placement of a description mentioned in subsection (6).
 - (9C) For the purposes of subsection (9A), a local authority are authorised to place C for adoption only if they have been authorised to do so under –
 - (a) section 19 of the Adoption and Children Act 2002 (placing children with parental consent); or
 - (b) under a placement order made under section 21 of that Act.”
- (6) In subsection (10)(a), after “arrangements they make under subsection (2)” insert “or (9B)”.

2 Adoption agencies: repeal of requirement to give due consideration to ethnicity: England

- (1) Section 1 of the Adoption and Children Act 2002 (considerations applying when making decisions about the adoption of a child) is amended as follows.
- (2) In subsection (5) (due consideration to be given to religious persuasion, racial origin and cultural and linguistic background), for “In placing the child for adoption, the adoption agency” substitute “In placing a child for adoption, an adoption agency in Wales”.
- (3) In consequence of the amendment made by subsection (2) –
 - (a) in subsection (1), for “This section applies” substitute “Subsections (2) to (4) apply”;
 - (b) in subsection (6), for “The court or adoption agency” substitute “In coming to a decision relating to the adoption of a child, a court or adoption agency”;
 - (c) After subsection (8) insert –
 - “(9) In this section “adoption agency in Wales” means an adoption agency that is –
 - (a) a local authority in Wales, or
 - (b) a registered adoption society whose principal office is in Wales.”

PROVISIONS ABOUT ADOPTION: EARLY PERMANENCE THROUGH ‘FOSTERING FOR ADOPTION’ AND MATCHING FOR ADOPTION

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the provisions about adoption reform as published for Pre-Legislative Scrutiny on 7 November 2012. They have been prepared by the Department for Education. Their purpose is to assist the reader in understanding these provisions. They do not form part of the provisions.
2. The notes need to be read in conjunction with the provisions. They are not, and are not meant to be, a comprehensive description of the provisions.

COMMENTARY ON CLAUSES

Clause 1: Placement of looked after children with prospective adopters

3. This clause amends section 22C of the Children Act 1989 as it applies in relation to England. It imposes a new duty on a local authority looking after a child to give preference to the placement of the child in a ‘Fostering for Adoption’ placement if one is available.
4. The duty will apply where the local authority has decided that the child ought to be placed for adoption and it has matched the child with an approved prospective adopter who is also a local authority foster parent, but it does not yet have authorisation to place the child for adoption. In these circumstances the local authority will be under a duty to give preference to a placement with those foster parents, where this is considered to be the most appropriate placement. Section 22 of the Children Act 1989 (duty of local authorities in relation to children looked after by them) will apply in relation to a decision about what placement is most appropriate.
5. It is already legally possible for children to be placed under the Children Act 1989 with carers who are local authority foster parents, but who are also prospective adopters and have been identified as prospective adopters for that particular child. This amendment is intended to ensure that local authorities give preference to such placements.

Clause 2: Adoption agencies: repeal of requirement to give due consideration to ethnicity: England

6. This clause amends section 1 of the Adoption and Children Act 2002 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.

7. 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 will be 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.

8. 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).

Keeling Schedule

CLAUSE 1: PLACEMENT OF LOOKED AFTER CHILDREN WITH PROSPECTIVE ADOPTERS

This schedule shows how section 22C of the Children Act 1989 would look as amended by clause 1.

Inserted text is shown in italics, omitted text is struck through.

This schedule has been prepared by the Department for Education. It is intended for illustrative purposes only, to assist the reader to understand the changes made by the provision. While care has been taken in its preparation it may not be full and complete in every respect.

Children Act 1989

Section 22C: Ways in which looked after children are to be accommodated and maintained

- (1) This section applies where a local authority are looking after a child (“C”).
- (2) The local authority must make arrangements for C to live with a person who falls within subsection (3) (but ~~subject to subsection (4)~~ *subject to subsections (4) and (9B)*).
- (3) A person (“P”) falls within this subsection if—
 - (a) P is a parent of C;
 - (b) P is not a parent of C but has parental responsibility for C; or
 - (c) in a case where C is in the care of the local authority and there was a residence order in force with respect to C immediately before the care order was made, P was a person in whose favour the residence order was made.
- (4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—
 - (a) would not be consistent with C's welfare; or
 - (b) would not be reasonably practicable.
- (5) If the local authority are unable to make arrangements under subsection (2), they must place C in the placement which is, in their opinion, the most appropriate placement available (*but subject to subsection (9B)*).
- (6) In subsection (5) “placement” means—

- (a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent;
 - (b) placement with a local authority foster parent who does not fall within paragraph (a);
 - (c) placement in a children's home in respect of which a person is registered under Part 2 of the Care Standards Act 2000; or
 - (d) subject to section 22D, placement in accordance with other arrangements which comply with any regulations made for the purposes of this section.
- (7) In determining the most appropriate placement for C *under subsection (5)*, the local authority must, subject to the other provisions of this Part (in particular, to their duties under section 22)—
- (a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection;
 - (b) comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8); and
 - (c) comply with subsection (9) unless that is not reasonably practicable.
- (8) The local authority must ensure that the placement is such that—
- (a) it allows C to live near C's home;
 - (b) it does not disrupt C's education or training;
 - (c) if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together;
 - (d) if C is disabled, the accommodation provided is suitable to C's particular needs.
- (9) The placement must be such that C is provided with accommodation within the local authority's area.
- (9A) Subsection (9B) applies where the local authority are a local authority in England and—*
- (a) are satisfied that C ought to be placed for adoption,*
 - (b) have decided that C ought to be placed for adoption with a person who is a local authority foster parent and has been approved as a prospective adopter, and*
 - (c) are not authorised to place C for adoption.*

(9B) The local authority must place C with the local authority foster parent mentioned in subsection (9A)(b), unless in their opinion it would be more appropriate—

(a) to make arrangements for C to live with a person falling within subsection (3), or

(b) to place C in a placement of a description mentioned in subsection (6).

(9C) For the purposes of subsection (9A), a local authority are authorised to place C for adoption only if they have been authorised to do so under—

(a) section 19 of the Adoption and Children Act 2002 (placing children with parental consent); or

(b) under a placement order made under section 21 of that Act.

(10) The local authority may determine—

(a) the terms of any arrangements they make under subsection (2) *or* (9B) in relation to C (including terms as to payment); and

(b) the terms on which they place C with a local authority foster parent (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).

(11) The appropriate national authority may make regulations for, and in connection with, the purposes of this section.

(12) In this Act “local authority foster parent” means a person who is approved as a local authority foster parent in accordance with regulations made by virtue of paragraph 12F of Schedule 2.

CLAUSE 2: ADOPTION AGENCIES: REPEAL OF REQUIREMENT TO GIVE DUE CONSIDERATION TO ETHNICITY: ENGLAND

This schedule shows how section 1 of the Adoption and Children Act 2002 would look as amended by clause 2.

Inserted text is shown in italics, omitted text is struck through.

This schedule has been prepared by the Department for Education. It is intended for illustrative purposes only, to assist the reader to understand the changes made by the provision. While care has been taken in its preparation it may not be full and complete in every respect.

Adoption and Children Act 2002

Section 1: Considerations applying to the exercise of powers

- (1) ~~This section applies~~ *Subsections (2) to (4) apply* whenever a court or adoption agency is coming to a decision relating to the adoption of a child.
- (2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.
- (3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.
- (4) The court or adoption agency must have regard to the following matters (among others)—
 - (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
 - (b) the child's particular needs,
 - (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
 - (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,
 - (e) any harm (within the meaning of the Children Act 1989 (c 41)) which the child has suffered or is at risk of suffering,
 - (f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—
 - (i) the likelihood of any such relationship continuing and the value to the child of its doing so,

- (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,
- (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

(5) ~~In placing the child for adoption, the adoption agency~~ *In placing a child for adoption, an adoption agency in Wales* must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

(6) ~~The court or adoption agency~~ *In coming to a decision relating to the adoption of a child, a court or adoption agency* must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

(7) In this section, “coming to a decision relating to the adoption of a child”, in relation to a court, includes—

- (a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a placement order (or the revocation of such an order) or an order under section 26 (or the revocation or variation of such an order),
- (b) 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,

but does not include coming to a decision about granting leave in any other circumstances.

(8) For the purposes of this section—

- (a) references to relationships are not confined to legal relationships,
- (b) references to a relative, in relation to a child, include the child's mother and father.

(9) *In this section “adoption agency in Wales” means an adoption agency that is-*

- (a) a local authority in Wales, or*
- (b) a registered adoption society whose principal office is in Wales.*



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