



ADOPTION BILL 2020

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ADOPTION BILL 2020

A **BILL** to amend the law in relation to adoption and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Adoption Act 2020.

2 Commencement

- (1) This Act (other than section 1 and this section) comes into operation on such day or days as the Department of Health and Social Care may by order appoint.
- (2) An order under subsection (1) may include such consequential, incidental, supplementary, transitional and transitory provision as the Department of Health and Social Care considers necessary or expedient.

PART 2 – THE ADOPTION SERVICE

DIVISION 1: INTRODUCTORY AND INTERPRETATION

3 Introductory

This Part deals with—

- (a) the Adoption Service maintainable by the Department;
- (b) the recognition of approved adoption societies;
- (c) the regulation and control of approved adoption societies;
- (d) the provision of adoption support services by the Department.

4 The Adoption Service

P2002/38/2 and drafting

- (1) The services maintained by the Department under this Part may be collectively referred to as “**the Adoption Service**”.
- (2) An approved adoption society is to be treated as registered in respect of any facility of the Adoption Service unless it is a condition of its registration that it does not provide that facility.

DIVISION 2: PROVISION OF THE ADOPTION SERVICE

5 Maintenance of Adoption Service

P2002/38/3

- (1) The Department must ensure the continued provision within the Island of a service designed to meet the needs, in relation to adoption, of —
 - (a) children who may be adopted, their parents and guardians,
 - (b) persons wishing to adopt a child, and
 - (c) adopted persons, their parents, natural parents and former guardians,and for that purpose must provide the requisite facilities.
- (2) Those facilities must include making, and participating in, arrangements —
 - (a) for the adoption of children, and
 - (b) for the provision of support services (“adoption support services”).
- (3) As part of the Adoption Service, the arrangements made for the purposes of subsection (2)(b) —
 - (a) must extend to the provision of adoption support services to persons who are within a description prescribed by regulations;
 - (b) may extend to the provision of those services to other persons.
- (4) The Department may provide any of the requisite facilities by securing their provision by —
 - (a) an approved adoption society, or
 - (b) a person of a prescribed description.
- (5) The Department must provide the Adoption Service in conjunction with its other social and care services, and with approved adoption agencies in the Island, in such a manner as to avoid duplication, omission or delay.
- (6) The social and care services referred to in subsection (5) are the functions of the Department which are social services functions

within the meaning of the 2001 Act and the *Social Services Act 2011* (which, in each case, include, in particular, those functions in so far as they relate to children).

- (7) The Department may by order designate a voluntary organisation which is a care service registered under Part 3 of the 2013 Act as an approved adoption society for the purposes of this Act.
- (8) An order under subsection (7) may designate an approved adoption agency for the purpose of providing facilities —
 - (a) in respect of adoptions other than those mentioned in subsection (9), or
 - (b) in respect of any adoptions, including those mentioned in that subsection.
- (9) The adoptions referred to in subsection (8) are —
 - (a) a Convention adoption,
 - (b) an adoption effected by a Convention adoption order,
 - (c) an overseas adoption,
 - (d) an adoption of a child habitually resident in the British Islands which is not a Convention adoption and is effected under the law of a country or territory outside the British Islands, and
 - (e) an adoption of a child habitually resident outside the British Islands which is effected by an adoption order other than a Convention adoption order.

6 **Joint arrangements etc.**

P2002/38/3ZA

- (1) The Department may make arrangements for all or any of its functions within subsection (2) to be carried out on its behalf by one or more other adoption agencies.
- (2) Those functions are functions in relation to —
 - (a) the recruitment of persons as prospective adopters;
 - (b) the assessment of prospective adopters' suitability to adopt a child;
 - (c) the approval of prospective adopters as suitable to adopt a child;
 - (d) decisions as to whether a particular child should be placed for adoption with a particular prospective adopter;
 - (e) the provision of adoption support services.
- (3) Arrangements under this section may make different provision for different purposes.
- (4) The Department may by regulations amend subsection (2).

DIVISION 3: APPROVED ADOPTION SOCIETIES

7 Arrangements on cancellation of registration

P2002/38/6

Where, by virtue of the cancellation of its registration under Part 3 of the 2013 Act, a body has ceased to be an approved adoption agency, the Department may direct the body to make such arrangements as to —

- (a) the transfer of its activities relating to children, and
- (b) other transitional matters as seem to it expedient.

8 Inactive or defunct adoption agencies etc.

P2002/38/7

- (1) This section applies where it appears to the Department that —
 - (a) a body which is or has been an approved adoption agency is inactive or defunct, or
 - (b) a body which has ceased to be an approved adoption agency by virtue of the cancellation of its registration under Part 3 of the 2013 Act, has not made such arrangements for the transfer of its activities relating to children as are specified in a notice given to it by the Department.
- (2) The Department may, in relation to such functions of the agency as relate to children take any such action as might have been taken by the agency or by the agency jointly with the Department.
- (3) The Department may charge the agency for expenses necessarily incurred by it or on its behalf in securing the transfer of the agency's activities relating to children.
- (4) Before taking action under subsection (2) the Department must, if practicable, consult the agency.

9 Information concerning adoption

P2002/38/13 and drafting

- (1) Each approved adoption agency must give to the Department any statistical or other general information it requires about —
 - (a) its performance of all or any of its activities relating to adoption;
 - (b) the children and other persons in relation to whom it has performed those activities.
- (2) The relevant officer of the court must give to the Department any statistical or other general information it requires about the proceedings under this Act of the court in question.
- (3) The information required under this section must be given at the times, and in the form, directed by the Department.

Regulations

10 General power to regulate approved adoption agencies

P2002/38/9

- (1) Regulations may make provision for any purpose relating to the exercise by approved adoption agencies of their functions in relation to adoption.
- (2) The extent of the power to make regulations under this section is not limited by sections 11, 27, 37, 67, 85 98 and Part 7 or by any other powers exercisable in respect of approved adoption agencies.
- (3) Regulations may provide that a person who contravenes or fails to comply with any provision of regulations under this section commits an offence.

Maximum penalty - (summary) a fine not exceeding level 5 on the standard scale.

- (4) Proceedings for an offence under this section—
 - (a) may not be brought more than 6 years after the commission of the offence but, subject to that,
 - (b) may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.

11 Management etc. of approved adoption agencies

P2002/38/10 and drafting

- (1) Regulations under section 10 may —
 - (a) make provision as to —
 - (i) the persons who are fit to work for an approved adoption agency for the purposes of the activities mentioned in section 10;
 - (ii) the fitness of premises;
 - (iii) the management and control of an adoption agency's operations;
 - (iv) the number of persons, or persons of any particular type, working for the purposes of those activities;
 - (v) the management and training of persons working for the purposes of those activities;
 - (vi) the keeping of information;
 - (vii) the persons who are fit to manage an agency, including provision prohibiting persons from doing so unless they are registered in, or in a particular part of, one of the registers referred to in subsection (2);

- (viii) the facilities and services to be provided by an agency;
 - (ix) the keeping of accounts;
 - (x) the notification to the Department of events occurring in premises used for the purposes of an agency;
 - (xi) the making of adequate arrangements for the running of an agency during a period when its manager is absent;
 - (xii) the giving of notice to the Department of changes in the ownership of an agency or the identity of its officers;
 - (xiii) requiring arrangements to be made for dealing with complaints made by or on behalf of those seeking, or receiving, any of the services provided by a society an agency and requiring the agency or manager to take steps for publicising the arrangements;
- (b) impose requirements as to the financial position of an agency;
 - (c) make provision requiring the appointment of a manager;
 - (d) make provision for securing the welfare of children placed by an agency, including provision as to the promotion and protection of their health.
- (2) Regulations made by virtue of subsection (1)(a)(i) may, in particular, make provision for prohibiting persons from working in prescribed positions unless they are registered in, or in a particular part of, one of the registers maintained under section 107 of 2013 Act.

12 Fees

P2002/38/11 and drafting

- (1) Regulations under section 10 may prescribe —
- (a) the fees which an adoption agency may charge in respect of services it provides to persons providing facilities as part of the Adoption Service;
 - (b) the fees which may be paid by an adoption agency to persons providing or assisting in providing such facilities.
- (2) Regulations under section 10 may prescribe the fees which may be charged by the Department in respect of the provision of prescribed facilities of the Adoption Service where the following conditions are met.
- (3) The conditions are that the facilities are provided in connection with —
- (a) the adoption of a child brought into the Island for the purpose of adoption, or
 - (b) a Convention adoption, an overseas adoption or an adoption effected under the law of a country or territory outside the Island.

- (4) Regulations under section 10 may 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.

DIVISION 4: ADOPTION SUPPORT SERVICES

13 Assessments etc. for adoption support services

P2002/38/4

- (1) "Adoption support services" means —
 - (a) counselling, advice and information, and
 - (b) any other services prescribed by regulations, in relation to adoption.
- (2) The power to make regulations under subsection (1) is to be exercised so as to secure that the Department provides financial support in relation to adoption support services.
- (3) The Department must at the request of —
 - (a) children who may be adopted, their parents and guardians,
 - (b) persons wishing to adopt a child,
 - (c) adopted persons, their parents, natural parents and former guardians, or
 - (d) any other person who falls within a description prescribed by regulations (subject to subsection (9)(a)),carry out an assessment of that person's needs for adoption support services.
- (4) The Department may, at the request of any person, carry out an assessment of that person's needs for adoption support services.
- (5) In carrying out an assessment, the Department may request the help of —
 - (a) approved adoption agencies, or
 - (b) other persons who are within a description prescribed by regulations of persons who may provide the facilities in relation to adoption services.
- (6) Where, as a result of an assessment, the Department decides that a person has a need for adoption support services, it must then decide whether to provide any such services to that person.
- (7) If —
 - (a) the Department decides to provide any adoption support services to a person, and

- (b) the circumstances fall within a description prescribed by regulations,
- the Department must prepare a plan in accordance with which adoption support services are to be provided to the person and keep the plan under review.
- (8) Regulations may make provision about –
- (a) assessments,
 - (b) preparing and reviewing plans,
 - (c) the provision of adoption support services in accordance with plans, and
 - (d) reviewing the provision of adoption support services.
- (9) The regulations may in particular make provision –
- (a) as to the circumstances in which a person mentioned in paragraph (d) of subsection (3) is to have a right to request an assessment of needs in accordance with that subsection;
 - (b) about the type of assessment which, or the way in which an assessment, is to be carried out;
 - (c) about the circumstances and way in which a plan is to be prepared;
 - (d) about the way in which, and time at which, a plan or the provision of adoption support services is to be reviewed;
 - (e) about the considerations to which the Department is to have regard in carrying out an assessment or review or preparing a plan;
 - (f) as to the circumstances in which the Department may provide adoption support services subject to conditions;
 - (g) as to the consequences of conditions imposed by virtue of paragraph (f) not being met (including the recovery of any financial support provided by the Department);
 - (h) as to the circumstances in which this section may apply to the Department in respect of persons who are outside the Island;
 - (i) as to the circumstances in which the Department may recover from an approved adoption society or any other person (whether or not within the Island) the expenses of providing adoption support services to any person.
- (10) The Department may carry out an assessment of the needs of any person under this section at the same time as an assessment of that person's needs is made under any other enactment.
- (11) Where it appears to the Department that another Department or Statutory Board could, by taking any specified action, help in the exercise of any of the Department's functions under this section, it

may request the help of that other Department or Statutory Board, specifying the action in question.

- (12) A Department or Statutory Board whose help is so requested must comply with the request if it is consistent with the exercise of its functions.

14 **Adoption support services: duty to provide information**

P2002/38/4B

- (1) Except in circumstances prescribed by regulations, the Department must provide the information specified in subsection (2) to —
- (a) any person who has contacted the Department to request information about adopting a child,
 - (b) any person who has informed the Department that they wish to adopt a child,
 - (c) any person who the Department is aware is a parent of an adopted child, and
 - (d) any person who is a parent of an adopted child and has contacted the Department to request any of the information specified in subsection (2).
- (2) The information is —
- (a) information about the adoption support services available to people in the Island;
 - (b) information about the right to request an assessment under section 13, and the agency's duties under that section and regulations made under it;
 - (c) any other information prescribed by regulations.

PART 3 – THE CONSIDERATIONS

15 **Introductory**

This Part sets out —

- (a) the fundamental considerations for a court and an adoption agency when making a decision relating to adoption;
- (b) the matters to which the court and an adoption agency must have regard when making such a decision.

16 **Considerations applying to the exercise of powers**

P2002/38/1

- (1) This section applies 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 the whole of the child's 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 the whole of their 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 2001 Act) which the child has suffered or is at risk of suffering;
 - (f) the relationship which the child has with—
 - (i) relatives,
 - (ii) any person who is a prospective adopter with whom the child is placed, and
 - (iii) any other person in relation to whom the court or agency considers the relationship to be relevant;
 - (g) the child's heritage.
 - (5) For the purposes of paragraph (f) of subsection (4), the court and an adoption agency must have regard to —
 - (a) the likelihood of any relationship referred to in that paragraph continuing and the value to the child of its doing so;
 - (b) the ability and willingness of any person referred to in that paragraph to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs;
 - (c) the wishes and feelings of any person referred to in that paragraph, regarding the child.
 - (6) Whilst the child's heritage shall be considered in determining whether it is in the child's best interests to remain in the Island, it shall not be the overriding consideration in making that determination.
 - (7) 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 2001 Act) 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.

- (8) In this section, “coming to a decision relating to the adoption of a child”, in relation to a court —
- (a) includes coming to a decision—
 - (i) 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 36 or 53 (or the revocation or variation of such an order);
 - (ii) 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;
 - (b) but does not include coming to a decision about granting leave in any other circumstances.
- (9) 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.

PART 3 –THE ADOPTION PROCESS

DIVISION 1: INTRODUCTORY

17 Introductory

This Part describes the main elements of the adoption process, namely —

- (a) placement for adoption,
- (b) the adoption application and its preliminaries, and
- (c) adoption orders.

DIVISION 2: PLACEMENT OF CHILDREN BY ADOPTION AGENCY FOR ADOPTION

18 Interpretation of this Part—

- (1) In this Part, “**parent**” (except where otherwise stated) means a parent having parental responsibility within the meaning of the 2001 Act.
- (2) A person may consent to adoption without knowing the identity of the persons in whose favour the order will be made.

- (3) References in this Part to an adoption agency being, or not being, authorised to place a child for adoption are to the agency being or (as the case may be) not being authorised to do so under section 19 or a placement order.

19 Placing children with parental consent

P2002/38/19

- (1) No child less than 6 weeks old may be placed for adoption in accordance with this section.
- (2) Where an adoption agency is satisfied that each parent or guardian of a child—
- (a) has consented to the child being placed for adoption with prospective adopters identified in the consent, and
 - (b) has not withdrawn the consent,
- the agency is authorised to place the child for adoption accordingly.
- (3) Where an adoption agency is satisfied that each parent or guardian of a child—
- (a) being placed for adoption with any prospective adopters who may be chosen by the agency, and
 - (b) has not withdrawn the consent,
- the agency is authorised to place the child for adoption accordingly.
- (4) Placements referred to in subsections (2) and (3) may take place in circumstances where the court could make a care order under section 31 of the 2001 Act do not exist.
- (5) An adoption agency may only place a child for adoption with prospective adopters if the agency is satisfied that the child ought to be placed for adoption.
- (6) Where a placement takes place in accordance with subsection (2) and the child is subsequently removed from, or returned by, the identified prospective adopters the consent to the child being placed with those adopters may be treated as consent under, and for the purposes of, subsection (3).
- (7) Subsections (2) and (3) do not apply where —
- (a) an application has been made on which a care order might be made and the application has not been disposed of, or
 - (b) a care order or placement order has been made after the consent was given.
- (8) References in this Act to a child placed for adoption under this section include a child who was placed under this section with prospective adopters and continues to be placed with them, whether or not consent to the placement has been withdrawn.

- (9) Consent must be given in the form prescribed by rules which may prescribe forms in which a person giving consent may do so.
- (10) Consent given under this section must be withdrawn —
 - (a) in the form prescribed by rules, or
 - (b) by notice given to the agency.
- (11) Subsection (12) applies if —
 - (a) an agency has placed a child for adoption in accordance with subsection (3), and
 - (b) at a later time, the other parent of the child acquires parental responsibility for the child.
- (12) The other parent is to be treated as having at that time given consent in accordance with this section in the same terms as those in which the first parent gave consent.
- (13) A child who is placed or authorised to be placed for adoption with prospective adopters (in or outside the Island) under this section is looked after by the Department.
- (14) If an application for an adoption order has been made by any persons in respect of a child and has not been disposed of —
 - (a) an adoption agency which placed the child with those persons may leave the child with them until the application is disposed of, but
 - (b) apart from that, the child may not be placed for adoption under this section with any prospective adopters.

20 **Advance consent to adoption**

P2002/38/20

- (1) A parent or guardian of a child who consents to the child being placed for adoption by an adoption agency under section 19 may, at the same or any subsequent time, consent to the making of a future adoption order.
- (2) Consent under this section —
 - (a) where the parent or guardian has consented to the child being placed for adoption with prospective adopters identified in the consent, may be consent to adoption by those prospective adopters, or
 - (b) may be consent to adoption by any prospective adopters who may be chosen by the agency.
- (3) An adoption agency may only place a child for adoption with prospective adopters if the agency is satisfied that the child ought to be placed for adoption.

- (4) A person may withdraw any consent given under this section at any time before the making of an application for an adoption order.
- (5) A person who gives consent under this section may, at the same or any subsequent time, by notice given to the adoption agency —
 - (a) state that the person does not wish to be informed of any application for an adoption order, or
 - (b) withdraw such a statement.
- (6) A notice under subsection (5) has effect from the time when it is received by the adoption agency but has no effect if the person concerned has withdrawn their consent.
- (7) Consent under this section must be given in the form prescribed by rules which may prescribe forms in which a person giving consent may do so.
- (8) Consent given under this section must be withdrawn —
 - (a) in the form prescribed by rules, or
 - (b) by notice given to the agency.
- (9) A child who is placed or authorised to be placed for adoption with prospective adopters (in or outside the Island) under this section is looked after by the Department.
- (10) If an application for an adoption order has been made by any persons in respect of a child and has not been disposed of —
 - (a) an adoption agency which placed the child with those persons may leave the child with them until the application is disposed of; but
 - (b) apart from that, the child may not be placed for adoption under this section with any prospective adopters.

21 Placement orders

P2002/38/21

- (1) A placement order cannot be made in respect of a child who is less than 6 weeks old and any consent given by the mother to the making of an adoption order in respect of such a child is ineffective.
- (2) A placement order is an order made by the court authorising the Department to place a child for adoption with any prospective adopters who may be chosen by the Department.
- (3) The court may not make a placement order in respect of a child unless —
 - (a) the child is subject to a care order,
 - (b) the court is satisfied that the conditions in section 31(2) of the 2001 Act (conditions for making a care order) are met, or

- (c) the child has no parent or guardian.
- (4) The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied that the parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the Department and has not withdrawn the consent.
This is subject to subsection (5).
- (5) The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied that the parent's or guardian's consent should be dispensed with because—
 - (a) the parent or guardian cannot be found,
 - (b) the parent or guardian lacks capacity (within the meaning of the *Mental Health Act 1998*) to give consent, or
 - (c) the welfare of the child requires the consent to be dispensed with.
- (6) The following provisions apply to references in this Part to any parent or guardian of a child giving or withdrawing —
 - (a) consent to the placement of a child for adoption, or
 - (b) consent to the making of an adoption order (including a future adoption order).
- (7) A placement order may be made subject to any conditions the court thinks appropriate.
- (8) Without limiting subsection (7), conditions may make provision for the placement of a child for adoption with any prospective adopters outside the Island.
- (9) A placement order continues in force until —
 - (a) it is revoked under section 23,
 - (b) an adoption order is made in respect of the child, or
 - (c) the child marries, forms a civil partnership or, in the case of a child who is 16 or over, that child attains the age of 18 years.

22 Applications for placement orders

P2002/38/22

- (1) The Department must apply to the court for a placement order in respect of a child if —
 - (a) the Department has decided that it is in the child's best interests to place the child for adoption or the child is being provided with accommodation by the Department,
 - (b) no adoption agency is authorised to place the child for adoption,
 - (c) the child has no parent or guardian or the Department consider that the conditions in section 31(2) of the 2001 Act are met, and

- (d) the Department is satisfied that the child ought to be placed for adoption.
- (2) If —
- (a) an application has been made (and has not been disposed of) on which a care order might be made in respect of a child, or
- (b) a child is subject to a care order and the Department is not authorised to place the child for adoption,
- the Department must apply to the court for a placement order if it is satisfied that the child ought to be placed for adoption.
- (3) If —
- (a) a child is subject to a care order, and
- (b) the Department is authorised to place the child for adoption under section 1919,
- the Department may apply to the court for a placement order.
- (4) A child is looked after by the Department if the Department —
- (a) is under a duty to apply to the court for a placement order in respect of a child, or
- (b) has applied for a placement order in respect of a child and the application has not been disposed of.
- (5) Subsections (1) to (3) do not apply in respect of a child —
- (a) if any persons have given notice of intention to adopt, unless the period of 4 months beginning with the giving of the notice has expired without them applying for an adoption order or their application for such an order has been withdrawn or refused, or
- (b) if an application for an adoption order has been made and has not been disposed of.
- (6) The court may give any directions it considers appropriate for the medical or psychiatric examination or other assessment of a child where —
- (a) an application for a placement order in respect of that child has been made and has not been disposed of, and
- (b) no interim care order under section 35 of the 2001 Act is in force.
- (7) A child who is of sufficient understanding to make an informed decision may refuse to submit to such an examination or other assessment.

23 Revoking placement orders

P2002/38/24

- (1) The court may revoke a placement order on the application of any person.

- (2) But an application may not be made by a person other than the child or the Department authorised by the order to place the child for adoption unless —
 - (a) the court has given leave to apply, and
 - (b) the child is not placed for adoption by the Department within a reasonable time.
- (3) The court cannot give leave under subsection (2)(a) unless satisfied that there has been a change in circumstances since the order was made.
- (4) If the court determines, on an application for an adoption order, not to make the order, it may revoke any placement order in respect of the child.
- (5) Where —
 - (a) an application for the revocation of a placement order has been made and has not been disposed of, and
 - (b) the child is not placed for adoption by the Department,the child may not without the court's leave be placed for adoption under the order.

DIVISION 3: THE ADOPTION APPLICATION

Preliminaries to adoption

24 Child to live with adopters before application

P2002/38/42

- (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 (7) applies.
- (2) If the applicant (or one of them) is the parent or step-parent or a relative of the child, the condition is that the child must have had its home with one or both of them at all times during the period of 12 months preceding the application.
- (3) If the child was placed for adoption with the applicant or applicants by an adoption agency under Division 2 of this Part, the conditions are that the child —
 - (a) is at least 19 weeks old, and
 - (b) had its home 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 13 weeks preceding the application.

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- (4) If the applicant is a parent of the child, the conditions are that the child—
- (a) is at least 19 weeks old, and
 - (b) had its home 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 13 weeks preceding the application.
- (5) In the case of an application —
- (a) for a Convention adoption order, or
 - (b) other than for a Convention adoption order in respect of a child habitually resident outside the British Islands,
- the condition is that the child must have had its home with the applicant or, as the case may be, applicants at all times during the period of 12 months preceding the application.
- (6) If the applicants are foster parents with whom the child has been fostered in accordance with the fostering service established by the Department under section 24A of the 2001 Act, the conditions are that—
- (a) they have obtained the consent of the Department to make the application, and
 - (b) the child had its home with them at all times during the period of one year preceding the application.
- (7) In any other case, the conditions are that the child must have had its home 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.
- (8) Where the child was placed for adoption with the applicant or applicants by an adoption agency, an adoption order may not be made unless the court is satisfied that sufficient opportunities have been given to that agency 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.

25 Reports where child placed by agency

P2002/38/43

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 3, and
- (b) assist the court in any manner the court directs.

26 Notice of intention to adopt

P2002/38/44

- (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 Department of their intention to apply for the adoption order.
- (3) The notice must be given not more than 2 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 (7) or (8) of section 24 would apply, but
 - (b) the conditions in the subsection in question are not met,the person may not give notice of intention to adopt unless that person has the court’s leave to apply for an adoption order.
- (5) On receipt of a notice of intention to adopt, the Department 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 3 in relation to the application.
- (7) Where—
 - (a) the Department has placed a child with any persons otherwise than as prospective adopters, and
 - (b) the persons give notice of intention to adopt,the Department are not to be treated as leaving the child with them as prospective adopters.

27 Suitability of adopters

P2002/38/45

- (1) In determining the suitability of any person to adopt a child subsections (2) to (5) apply.
- (2) In respect of the prospective adopter and any other member of the prospective adopter's household who is aged 18 or over, the adoption agency must obtain an enhanced criminal record certificate issued under section 113B of the Police Act 1997 (of Parliament) which includes suitability information relating to children as extended to the

Island by the Police Act 1997 (Criminal Records) (Isle of Man) Order 2010 (a statutory instrument of Parliament).

- (3) An adoption agency may not consider a person suitable to adopt a child if that person or any member of that person's household aged 18 or over —
- (a) has been convicted of a specified offence committed at the age of 18 or over, or
 - (b) has been cautioned by a constable in respect of any such offence which, at the time the caution was given, was admitted.
- (4) In paragraph (2) “specified offence” means —
- (a) an offence against a child;
 - (b) any offence against an adult under the Sexual Offences Act 20**;
 - (c) any other offence involving bodily injury to a child, other than an offence of common assault or battery.
- (5) An adoption agency must consider the following information —
- (a) details of any previous family court proceedings in which the prospective adopter has been involved;
 - (b) a chronology of the prospective adopter from birth;
 - (c) the prospective adopter's—
 - (i) reasons for wishing to adopt a child,
 - (ii) views and feelings about adoption and its significance,
 - (iii) views about their parenting capacity,
 - (iv) views about parental responsibility and what it means,
 - (v) views about a suitable home environment for a child,
 - (vi) views about the importance and value of education,
 - (vii) views and feelings about the importance of a child's religious and cultural upbringing, and
 - (viii) views and feelings about contact;
 - (d) the views of other members of the prospective adopter's household and wider family in relation to adoption;
 - (e) the observations of the prospective adopter about their own experience of being parented and how this has influenced them;
 - (f) details of any experience the prospective adopter has had of caring for children (including as a parent, step-parent, foster parent, child minder or prospective adopter) and an assessment of the prospective adopter's ability in this respect;
 - (g) any other information which indicates how the prospective adopter and anybody else living in the prospective adopter's household is likely to relate to a child placed for adoption with the prospective adopter;

- (h) a description of the wider family of the prospective adopter and their role and importance to the prospective adopter and their likely role and importance to a child placed for adoption with the prospective adopter;
 - (i) information about the prospective adopter's home and the neighbourhood in which the prospective adopter lives;
 - (j) information about the local community of the prospective adopter, including the degree of the family's integration with its peer groups, friendships and social networks;
 - (k) details of the prospective adopter's educational history and attainments and the prospective adopter's views about how this has influenced them;
 - (l) details of the prospective adopter's employment history and the observations of the prospective adopter about how this has influenced them;
 - (m) the current employment of the prospective adopter and the prospective adopter's views about achieving a balance between employment and child care;
 - (n) details of the prospective adopter's income and expenditure;
 - (o) information about the prospective adopter's capacity to—
 - (i) provide for a child's needs, particularly emotional and behavioural development needs,
 - (ii) share a child's history and associated emotional issues, and
 - (iii) understand and support a child through possible feelings of loss and trauma.
- (6) Regulations under section 10 may make further provision as to the matters to be taken into account by an adoption agency in determining, or making a report in respect of, the suitability of any person to adopt a child.
- (7) In determining the suitability of a couple to adopt a child, an adoption agency must have proper regard to the need for stability and permanence in the couple's relationship.
- (8) Where a person's suitability to adopt a child has been assessed by a British Islands adoption panel and a child is to be adopted in the British Islands and brought to the Island, a panel constituted in the Island must —
- (a) have regard to the decision of the British Islands adoption panel and its reasons for its decision;
 - (b) consider the current and future needs of the child where the child has been or will be brought to the Island;
 - (c) consider whether the child's needs can be met in the Island after the local authority ceases to have responsibility for the child.

- (9) Regulations under section may make further provision regarding the matters to be taken into account for the purposes of subsection (7) and (8).

DIVISION 4: ADOPTION ORDERS

The making of adoption orders

28 Adoption orders

P2002/38/46

- (1) An adoption order is an order made by the court on an application under section 32 or 33 giving parental responsibility for a child to the adopters or adopter.
- (2) The making of an adoption order operates to extinguish —
- (a) the parental responsibility which any person other than the adopters or adopter has for the adopted child immediately before the making of the order;
 - (b) any order under the 2001 Act;
 - (c) any duty arising by virtue of an agreement or an order of a court to make payments, so far as the payments are in respect of the adopted child's maintenance or upbringing for any period after the making of the adoption order.
- (3) An adoption order —
- (a) does not affect parental responsibility so far as it relates to any period before the making of the order, and
 - (b) in the case of an order made on an application under section 33(2) by the partner of a parent of the adopted child, does not affect the parental responsibility of that parent or any duties of that parent within subsection (2)(c).
- (4) Subsection (2)(c) does not apply to a duty arising by virtue of an agreement —
- (a) which constitutes a trust, or
 - (b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.
- (5) An adoption order may be made even if the child to be adopted is already an adopted child.
- (6) Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child, and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.

29 Conditions for making adoption orders

P2002/38/47

- (1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met.
- (2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied —
 - (a) that the parent or guardian consents to the making of the adoption order,
 - (b) that the parent or guardian has consented under section 19 (and has not withdrawn the consent) and does not oppose the making of the adoption order, or
 - (c) that the parent's or guardian's consent should be dispensed with.
- (3) The court cannot dispense with the consent of any parent or guardian of a child to the making of an adoption order in respect of the child unless the court is satisfied that —
 - (a) the parent or guardian cannot be found or lacks capacity (within the meaning of the *Mental Health Act 1998*) to give consent, or
 - (b) the welfare of the child requires the consent to be dispensed with.
- (4) Any consent given by the mother to the making of an adoption order is ineffective if it is given less than 6 weeks after the child's birth.
- (5) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court's leave.
- (6) The second condition is that—
 - (a) the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made,
 - (b) either—
 - (i) 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
 - (ii) the child was placed for adoption under a placement order, and
 - (c) no parent or guardian opposes the making of the adoption order.
- (7) A parent or guardian may not oppose the making of an adoption order under the second condition without the court's leave.
- (8) The third condition is that the child —
 - (a) is the subject of a placement order under section 21 of the Adoption and Children Act 2001 (of Parliament),

- (b) is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted, or
 - (c) is free for adoption by virtue of an order made, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).
- (9) The court cannot give leave under subsection (3) or (5) unless satisfied that there has been a change in circumstances since the consent of the parent or guardian was given or, as the case may be, the placement order was made.
- (10) An adoption order may not be made in relation to a person who is or has been married.
- (11) An adoption order may not be made in relation to a person who is or has been a civil partner.
- (12) An adoption order may not be made in relation to a person who has attained the age of 19 years.
- (13) In this section, “Scottish permanence order” means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267)).

30 **Restrictions on making adoption orders**

P2002/38/48

- (1) The court may not hear an application for an adoption order in relation to a child, where a previous application made in relation to the child by the same persons was refused by any court.
- (2) But the court may hear such an application if it appears to the court that, because of a change in circumstances or for any other reason, it is proper to do so.

31 **Applications for adoption**

P2002/38/49

- (1) An application for an adoption order may be made by—
 - (a) a couple, or
 - (b) one person,
 but only if it is made under section 32 or 33 and one of the following conditions is met.

- (2) The first condition is that at least one of the couple (in the case of an application under section 32) or the applicant (in the case of an application under section 33) is domiciled in the Island.
- (3) The second condition is that both of the couple (in the case of an application under section 32) or the applicant (in the case of an application under section 33) have been habitually resident in a part of the Island for a period of not less than one year ending with the date of the application.
- (4) An application for an adoption order may only be made if the person to be adopted has not attained the age of 18 years on the date of the application.

32 **Adoption by couple**

P2002/38/50

- (1) An adoption order may be made on the application of a couple where both of them have attained the age of 21 years.
- (2) An adoption order may be made on the application of a couple where—
 - (a) one of the couple is the mother or the father of the person to be adopted and has attained the age of 18 years, and
 - (b) the other has attained the age of 21 years.

33 **Adoption by one person**

P2002/38/51

- (1) An adoption order may be made on the application of one person who has attained the age of 21 years and is not married or a civil partner.
- (2) An adoption order may be made on the application of one person who has attained the age of 21 years if the court is satisfied that the person is the partner of a parent of the person to be adopted.
- (3) An adoption order may be made on the application of one person who has attained the age of 21 years and is married if the court is satisfied that—
 - (a) the person's spouse cannot be found,
 - (b) the spouses have separated and are living apart, and the separation is likely to be permanent, or
 - (c) the person's spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.

- (4) An adoption order may be made on the application of one person who has attained the age of 21 years and is a civil partner if the court is satisfied that —
- (a) the person’s civil partner cannot be found,
 - (b) the civil partners have separated and are living apart, and the separation is likely to be permanent, or
 - (c) the person’s civil partner is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.

PART 5 – CONSEQUENCES OF PLACEMENTS

DIVISION 1: INTRODUCTORY

34 **Introductory**

This Part deals with the various consequences of a child being placed for adoption including —

- (a) the acquisition of parental responsibility by various parties;
- (b) the effect of placement on arrangements for contact with a placed child;
- (c) the making of residence orders in respect of a placed child;
- (d) restrictions on various orders (supervision and child assessment orders);
- (e) prohibitions, restrictions and permissions relating to the removal of a placed child;
- (f) the recovery by a parent of a child (whether placed for adoption or not);
- (g) provision for securing the return of a child upon revocation of placement orders;
- (h) the making of recovery orders to effect the return of a child in certain circumstances.

DIVISION 2: ACQUISITION OF PARENTAL RESPONSIBILITY

35 **Parental responsibility**

P2002/38/25

- (1) This section applies while —
- (a) a child is placed for adoption under section 21 or an adoption agency is authorised to place a child for adoption under that section, or

- (b) a placement order is in force in respect of a child.
- (2) Parental responsibility for the child is given to the adoption agency concerned.
- (3) While the child is placed with prospective adopters, parental responsibility is given to them.
- (4) The adoption agency may determine that the parental responsibility of any parent or guardian, or of prospective adopters, is to be restricted to the extent specified in the determination.

DIVISION 2: CONTACT

36 **Contact**

P2002/38/26

- (1) On an adoption agency being authorised to place a child for adoption—
 - (a) any contact order or residence order under section 11(1) of the 2001 Act ceases to have effect,
 - (b) any order under section 33 of that Act (parental contact etc. with children in care) ceases to have effect, and
 - (c) any activity direction made in proceedings for the making, variation or discharge of a residence order with respect to the child, or made in other proceedings that relate to such an order, is discharged.
- (2) While an adoption agency is so authorised or a child is placed for adoption —
 - (a) no application may be made for —
 - (i) a contact order or a residence order under section 11(1) of the 2001 Act, or
 - (ii) an order under section 34 of that Act, but
 - (b) the court may make an order under this section —
 - (i) 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
 - (ii) for the person named in the order and the child otherwise to have contact with each other.
- (3) An application for an order under this section may be made by —
 - (a) the child or the agency;
 - (b) any parent, guardian or relative;

- (c) any person in whose favour there was provision which ceased to have effect by virtue of subsection (1)(a) or an order which ceased to have effect by virtue of subsection (1)(b);
 - (d) if a residence order was in force immediately before an adoption agency was authorised to place the child for adoption, any person named in the order as a person with whom the child was to live;
 - (e) if a person had care of the child immediately before that time by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, that person;
 - (f) any person who has obtained the court's leave to make the application.
- (4) When making a placement order, the court may on its own initiative make an order under this section.

37 **Contact: supplementary**

P2002/38/27

- (1) An order under section 36 —
 - (a) has effect while an adoption agency is authorised to place the child for adoption or the child is placed for adoption, but
 - (b) may be varied or revoked by the court on an application by the child, the agency or a person named in the order.
- (2) An adoption agency may refuse to allow the contact that would otherwise be required by virtue of an order under that section if —
 - (a) it is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare, and
 - (b) the refusal is decided upon as a matter of urgency and does not last for more than 7 days.
- (3) Regulations may make provision as to —
 - (a) the steps to be taken by an adoption agency having exercised its power under subsection (2);
 - (b) the circumstances in which, and conditions subject to which, the terms of any order under section 36 may be departed from by agreement between an adoption agency and any person for whose contact with the child the order provides;
 - (c) notification by an adoption agency of any variation or suspension of arrangements made (otherwise than under an order under that section) with a view to allowing any person contact with the child.
- (4) Before making a placement order the court must —
 - (a) consider the arrangements which an adoption agency has made, or proposes to make, for allowing any person contact with the child, and

- (b) invite the parties to the proceedings to comment on those arrangements.
- (5) An order under section 36 may provide for contact on any conditions the court considers appropriate.

DIVISION 4: OTHER CONSEQUENCES OF PLACEMENT

38 Further consequences of placement

P2002/38/28

- (1) Where a child is placed for adoption under section 19 or an adoption agency is authorised to place a child for adoption under that section —
 - (a) a parent or guardian of the child may not apply for a residence order regulating the child's living arrangements unless an application for an adoption order has been made and the parent or guardian has obtained the court's leave under subsection (5) or (7) of section 29;
 - (b) if 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 court's leave under subsection (5) or (7) of that section.
- (2) Where —
 - (a) a child is placed for adoption under section 19 or an adoption agency is authorised to place a child for adoption under that section, or
 - (b) a placement order is in force in respect of a child,then (whether or not the child is in the Island) a person may not do either of the following things, unless the court gives leave or each parent or guardian of the child gives written consent.
- (3) Those things are —
 - (a) causing the child to be known by a new surname, or
 - (b) removing the child from the Island.
- (4) Subsection (3) does not prevent the removal of a child from the Island for a period of less than one month by a person who provides the child's home and has parental responsibility for the child.
- (5) For the purposes of subsection (1)(a), a residence order regulates a child's living arrangements if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following —
 - (a) with whom the child is to live, and
 - (b) when the child is to live with any person.

39 Further consequences of placement orders

P2002/38/29

- (1) Where a placement order is made in respect of a child and either —
 - (a) the child is subject to a care order, or
 - (b) the court at the same time makes a care order in respect of the child,the care order does not have effect at any time when the placement order is in force.
- (2) On the making of a placement order in respect of a child, any order mentioned in section 11(1) of the 2001 Act, and any supervision order in respect of the child, ceases to have effect.
- (3) Where a placement order is in force the following orders may not be made in respect of a child —
 - (a) a supervision order, and
 - (b) a child assessment order.
- (4) Where a placement order is in force, a residence order may be made with respect to the child's living arrangements only if —
 - (a) an application for an adoption order has been made in respect of the child, and
 - (b) the residence order is applied for by a parent or guardian who has obtained the court's leave under subsection (5) or (7) of section 29 or by any other person who has obtained the court's leave under this subsection.
- (5) For the purposes of subsection (4), a residence order is one made with respect to a child's living arrangements if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following —
 - (a) with whom the child is to live, and
 - (b) when the child is to live with any person.
- (6) Where a placement order is in force, no special guardianship order may be made in respect of the child unless —
 - (a) an application has been made for an adoption order, and
 - (b) the person applying for the special guardianship order has obtained the court's leave under this subsection or, if that person is a guardian of the child, has obtained the court's leave under section 29(5).
- (7) Section 17A of the 2001 Act applies in respect of an application for a special guardianship order for which leave has been given as mentioned in subsection (5) with the omission of the words "the beginning of the period of 3 months ending with".

- (8) Where a placement order is in force —
 - (a) section 17C(1)(b) of the 2001 Act (special guardianship: parental responsibility) has effect subject to any determination under section 23(4) of this Act;
 - (b) section 17C(3) and (4) of the 2001 Act (special guardianship: removal of child from Island etc.) does not apply.

DIVISION 5: REMOVAL OF PLACED CHILDREN

40 **General prohibitions on removal**

P2002/38/30

- (1) Where —
 - (a) a child is placed for adoption by an adoption agency under section 19, or
 - (b) a child is placed for adoption by an adoption agency and the agency has at no time been authorised to place the child for adoption,

a person (other than the agency) must not remove the child from the prospective adopters.
- (2) Where —
 - (a) a child who is not for the time being placed for adoption is in the care of the Department, and
 - (b) the Department has applied to the court for a placement order and the application has not been disposed of,

only a person who has the court's leave (or the Department) may remove the child from the accommodation.
- (3) Where subsection (2) does not apply, but —
 - (a) a child who is not for the time being placed for adoption is being provided with accommodation by an adoption agency, and
 - (b) the agency is authorised to place the child for adoption under section 19 or would be so authorised if any consent to placement under that section had not been withdrawn,

a person (other than the agency) must not remove the child from the accommodation.
- (4) This section is subject to sections 46 to 48 but those sections do not apply if the child is subject to a care order.
- (5) This section —
 - (a) applies whether or not the child in question is in the Island;

- (b) does not affect the exercise by the Department or other person of any power conferred by any enactment, other than section 25(3) or (4) of the 2001 Act (provision of accommodation);
 - (c) does not prevent the removal of a child who is arrested.
- (6) A person who removes a child in contravention of this section commits an offence.
- Maximum penalty — (summary) 3 months' custody, a fine of level 5 on the standard scale or both.

41 Restrictions on removal

P2002/38/36

- (1) At any time when a child's home is with any persons ("the people concerned") with whom the child is not placed by an adoption agency, but the people concerned —
- (a) have applied for an adoption order in respect of the child and the application has not been disposed of,
 - (b) have given notice of intention to adopt, or
 - (c) have applied for leave to apply for an adoption order under section 24(6) and the application has not been disposed of,
- a person may remove the child only in accordance with the provisions of this group of sections (that is, this section and sections 42 to 45).
- (2) For the purposes of this group of sections, a notice of intention to adopt is to be disregarded if —
- (a) the period of 4 months beginning with the giving of the notice has expired without the people concerned applying for an adoption order, or
 - (b) the notice is a second or subsequent notice of intention to adopt and was given during the period of 5 months beginning with the giving of the preceding notice.
- (3) For the purposes of this group of sections, if the people concerned apply for leave to apply for an adoption order under section 24(6) and the leave is granted, the application for leave is not to be treated as disposed of until the period of 3 days beginning with the granting of the leave has expired.
- (4) This section does not prevent the removal of a child who is arrested.
- (5) Where a parent or guardian may remove a child from the people concerned in accordance with the provisions of this group of sections, the people concerned must at the request of the parent or guardian return the child to the parent or guardian at once.
- (6) A person who —

- (a) fails to comply with subsection (5), or
- (b) removes a child in contravention of this section,
commits an offence.

Maximum penalty — (summary) 3 months' custody, a fine not exceeding level 5 on the standard scale or both.

- (7) This group of sections applies whether or not the child in question is in the Island.

42 **Applicants for adoption**

P2002/38/37

If section 41(1)(a) applies, the following persons may remove the child —

- (a) a person who has the court's leave;
- (b) the Department or other person in the exercise of a power conferred by any enactment, other than section 25(3) or (4) of the 2001 Act (provision of accommodation).

43 **Fostering service foster parents**

P2002/38/38

- (1) This section applies if the child's home is with foster parents with whom the child has been fostered in accordance with the fostering service established by the Department under section 24A of the 2001 Act (in this section "fostering service foster parents").

- (2) If —

- (a) the child has had its home with fostering service foster parents at all times during the period of 5 years ending with the removal and those foster parents have given notice of intention to adopt, or
- (b) an application has been made for leave under section 24(6) and has not been disposed of,

the following persons may remove the child.

- (3) They are —

- (a) a person who has the court's leave;
- (b) the Department or other person in the exercise of a power conferred by any enactment, other than section 25(3) or (4) of the 2001 Act (provision of accommodation).

- (4) If subsection (2) does not apply but —

- (a) the child has had its home with the fostering service foster parents at all times during the period of one year ending with the removal, and

- (b) those foster parents have given notice of intention to adopt, the following persons may remove the child.
- (5) They are —
- (a) a person with parental responsibility for the child who is exercising the power in section 25(3) or (4) of the 2001 Act;
 - (b) a person who has the court's leave;
 - (c) the Department or other person in the exercise of a power conferred by any enactment, other than section 25(3) or (4) of the 2001 Act (provision of accommodation).

44 **Partners of parents**

P2002/38/38

- (1) This section applies if a child's home is with a partner of a parent and the partner has given notice of intention to adopt.
- (2) If the child's home has been with the partner for not less than 3 years (whether continuous or not) during the period of 5 years ending with the removal, the following persons may remove the child —
- (a) a person who has the court's leave;
 - (b) the Department or other person in the exercise of a power conferred by any enactment, other than section 25(3) or (4) of the 2001 Act (provision of accommodation).
- (3) If subsection (2) does not apply, the following persons may remove the child —
- (a) a parent or guardian;
 - (b) a person who has the court's leave;
 - (c) the Department or other person in the exercise of a power conferred by any enactment, other than section 25(3) or (4) of the 2001 Act (provision of accommodation).

45 **Other non-agency cases**

P2002/38/39

- (1) In any case where sections 42 to 44 do not apply but —
- (a) the people concerned have given notice of intention to adopt, or
 - (b) the people concerned have applied for leave under section 24(6) and the application has not been disposed of,
- the following persons may remove the child.
- (2) They are —
- (a) a person who has the court's leave;

- (b) the Department or other person in the exercise of a power conferred by any enactment, other than section 25(3) or (4) of the 2001 Act (provision of accommodation).

DIVISION 6: RECOVERY OF CHILDREN

46 **Recovery by parent etc. where child not placed or is a baby**

P2002/38/31

- (1) Subsection (2) applies where —
 - (a) a child who is not for the time being placed for adoption is in the care of the Department,
 - (b) is being cared for by fostering service foster parents/registered foster carers, and
 - (c) the agency would be authorised to place the child for adoption under section 19 if consent to placement under that section had not been withdrawn.
- (2) If any parent or guardian of the child gives notice to the agency that they wish the child to be returned to them, the agency must return the child to the parent or guardian within the period of 7 days beginning with the giving of the notice unless an application is, or has been, made for a placement order and the application has not been disposed of.
- (3) Subsection (4) applies where —
 - (a) a child is placed for adoption by an adoption agency and the agency has at no time been authorised to place the child for adoption, and
 - (b) any parent or guardian of the child informs the agency that they wish the child to be returned to them,

unless an application is, or has been, made for a placement order and the application has not been disposed of.

- (4) The agency must give notice of the parent's or guardian's wish to the fostering service foster parents/registered foster carers who must return the child to the agency within the period of 7 days beginning with the day on which the notice is given.
- (5) A fostering service foster parent/registered foster carer who fails to comply with subsection (4) commits an offence.

Maximum penalty — (summary) 3 months' custody, a fine of level 5 on the standard scale or both.

- (6) As soon as a child is returned to an adoption agency under subsection (4), the agency must return the child to the parent or guardian in question

- (7) This section and sections 47 and 48—
- (a) apply whether or not the child in question is in the Island;
 - (b) do not affect the exercise by the Department or other person of any power conferred by any enactment, other than section 25(3) or (4) of the 2001 Act (provision of accommodation);
 - (c) do not prevent the removal of a child who is arrested.

47 **Recovery by parent etc. where child placed and consent withdrawn**

P2002/38/32

- (1) This section applies where —
- (a) a child is placed for adoption by an adoption agency under section 19 with prospective adopters, and
 - (b) consent to placement under that section has been withdrawn.
- (2) But this section does not apply where an application is, or has been, made for a placement order and the application has not been disposed of.
- (3) If a parent or guardian of the child informs the agency that they wish the child to be returned to them —
- (a) the agency must give notice of the parent’s or guardian’s wish to the prospective adopters, and
 - (b) the prospective adopters must return the child to the agency within the period of 14 days beginning with the day on which the notice is given.
- (4) A prospective adopter who fails to comply with subsection (3)(b) commits an offence.

Maximum penalty — (summary) 3 months’ custody, a fine of level 5 on the standard scale or both.

- (5) As soon as a child is returned to an adoption agency under this section, the agency must return the child to the parent or guardian in question.
- (6) Where a notice under subsection (3) is given, but —
- (a) before the notice was given, an application —
 - (i) for an adoption order (including an adoption order made in England, Wales, Scotland or Northern Ireland),
 - (ii) for a special guardianship order,
 - (iii) for a residence order to which subsection (6) applies, or
 - (iv) for permission to apply for an order within subparagraph (ii) or (iii), was made in respect of the child, and

- (b) the application (and, in a case where permission is given on an application to apply for an order within paragraph (a)(ii) or (iii), the application for the order) has not been disposed of,

the prospective adopters are not required by virtue of the notice to return the child to the agency unless the court so orders.

- (7) A residence order is one to which this subsection applies if it is an order regulating arrangements that consist of, or include, arrangements which relate to either or both of the following —

- (a) with whom a child is to live, and
- (b) when the child is to live with any person.

48 **Recovery by parent etc. where child placed and placement order refused**

P2002/38/33

- (1) This section applies where —
 - (a) a child is placed for adoption by the Department under section 19,
 - (b) the Department have applied for a placement order and the application has been refused, and
 - (c) any parent or guardian of the child informs the Department that they wish the child to be returned to them.
- (2) The prospective adopters must return the child to the Department on a date determined by the court.
- (3) A prospective adopter who fails to comply with subsection (2) commits an offence

Maximum penalty — (summary) 3 months' custody, a fine of level 5 on the standard scale or both.

- (4) As soon as a child is returned to the Department, it must return the child to the parent or guardian in question.

DIVISION 7: RETURN OF CHILDREN

49 **Placement orders: prohibition on removal**

P2002/38/34

- (1) Where a placement order in respect of a child —
 - (a) is in force, or
 - (b) has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by the Department,

a person (other than the Department) may not remove the child from the prospective adopters or from accommodation provided by the Department.

- (2) A person who removes a child in contravention of subsection (1) commits an offence.
Maximum penalty— (summary) 3 months' custody, a fine of level 5 on the standard scale or both.
- (3) Where a court revoking a placement order in respect of a child determines that the child is not to remain with any former prospective adopters with whom the child is placed, those adopters must return the child to the Department within the period determined by the court for the purpose.
- (4) A person who fails to return a child in accordance with subsection (3) commits an offence.
Maximum penalty— (summary) 3 months' custody, a fine of level 5 on the standard scale or both.
- (5) Where a court revoking a placement order in respect of a child determines that the child is to be returned to a parent or guardian, the Department must return the child to the parent or guardian as soon as the child is returned to the Department.
- (6) Where a court revoking a placement order in respect of a child who is in accommodation provided by the Department determines that the child is to be returned to a parent or guardian, the Department must return the child to the parent or guardian at once.
- (7) This section does not affect the exercise by the Department or other person of a power conferred by any enactment, other than section 25(3) and (4) of the 2001 Act (provision of accommodation).
- (8) This section does not prevent the removal of a child who is arrested.
- (9) This section applies whether or not the child in question is in the Island.

50 Return of child in other cases

P2002/38/35

- (1) Where a child is placed for adoption by an adoption agency and the prospective adopters give notice to the agency of their wish to return the child, the agency must —
 - (a) receive the child from the prospective adopters before the end of the period of 7 days beginning with the giving of the notice, and
 - (b) give notice to any parent or guardian of the child who have chosen to be notified of such an eventuality of the prospective adopters' wish to return the child.

- (2) Where a child is placed for adoption by an adoption agency, and the agency —
- (a) is of the opinion that the child should not remain with the prospective adopters, and
 - (b) gives notice to them of its opinion,
- the prospective adopters must, not later than the end of the period of 7 days beginning with the giving of the notice, return the child to the agency.
- (3) If the agency gives notice under subsection (2)(b), it must give notice to any parent or guardian of the child of the obligation to return the child to the agency except where that parent or guardian has expressed the desire not to be informed of the return of the child.
- (4) A prospective adopter who fails to comply with subsection (2) commits an offence.

Maximum penalty — (summary) 3 months' custody, a fine not exceeding level 5 on the standard scale or both.

- (5) Where —
- (a) an adoption agency gives notice under subsection (2) in respect of a child,
 - (b) before the notice was given, an application —
 - (i) for an adoption order (including an adoption order made in England, Wales, Scotland or Northern Ireland),
 - (ii) for a special guardianship order,
 - (iii) for a residence order to which subsection (6) applies, or
 - (iv) for permission to apply for an order within subparagraph (ii) or (iii), was made in respect of the child; and
 - (c) the application (and, in a case where permission is given on an application to apply for an order within paragraph (b)(ii) or (iii), the application for the order) has not been disposed of,
- prospective adopters are not required by virtue of the notice to return the child to the agency unless the court so orders.
- (6) A residence order is one to which this subsection applies if it is an order regulating arrangements that consist of, or include, arrangements which relate to either or both of the following —
- (a) with whom a child is to live, and
 - (b) when a child is to live with any person.
- (7) This section applies whether or not the child in question is in the Island.

DIVISION 8: RECOVERY ORDERS

51 **Recovery orders**

P2002/38/41

- (1) This section applies where it appears to the court —
 - (a) that a child has been removed in contravention of any of the preceding provisions of this Part or that there are reasonable grounds for believing that a person intends to remove a child in contravention of those provisions, or
 - (b) that a person has failed to comply with section 46(4), 47(3), 48(2), 49(3) and 50(2).
- (2) The court may, on the application of any person, by an order —
 - (a) direct any person who is in a position to do so to produce the child on request to any person mentioned in subsection (4);
 - (b) authorise the removal of the child by any person mentioned in that subsection;
 - (c) require any person who has information as to the child's whereabouts to disclose that information on request to any constable or officer of the court;
 - (d) authorise a constable to enter any premises specified in the order and search for the child, using reasonable force if necessary.
- (3) Premises may only be specified under subsection (2)(d) if it appears to the court that there are reasonable grounds for believing the child to be on them.
- (4) The persons referred to in subsection (2) are —
 - (a) any person named by the court;
 - (b) any constable;
 - (c) any person who, after the order is made under that subsection, is authorised to exercise any power under the order by an adoption agency which is authorised to place the child for adoption.
- (5) A person who intentionally obstructs a person exercising a power of removal conferred by the order commits an offence.

Maximum penalty — (summary) a fine not exceeding level 3 on the standard scale.
- (6) A person must comply with a request to disclose information as required by the order even if the information sought might constitute evidence that the person had committed an offence.
- (7) But in criminal proceedings in which the person is charged with an offence (other than one mentioned in subsection (8)) —

- (a) no evidence relating to the information provided may be adduced, and
 - (b) no question relating to the information may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.
- (8) The offence excluded from subsection (7) is an offence under section 2 or 5 of the *Perjury Act 1952* (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

PART 6 - POST-ADOPTION CONTACT

52 Introductory

This Part—

- (a) deals with the power of the court to make an order providing for contact between an adopted child and another person following the adoption of the child;
- (b) sets out the scope, effect, application and content of such an order.

53 Post-adoption contact

- (1) This section applies where—
 - (a) an adoption agency has placed or was authorised to place a child for adoption, and
 - (b) the court is making or has made an adoption order in respect of the child.
- (2) When making the adoption order or at any time afterwards, the court may make an order under this section granting the person named in the order only indirect contact with the child.
- (3) The following people may be named in an order under this section—
 - (a) any person who (but for the child's adoption) would be related to the child by blood (including half-blood), marriage or civil partnership;
 - (b) any former guardian of the child;
 - (c) any person who had parental responsibility for the child immediately before the making of the adoption order;
 - (d) any person who was entitled to make an application for an order under section 36 in respect of the child (contact with children placed or to be placed for adoption) by virtue of subsection (3)(c), (d) or (e) of that section;

- (e) any person with whom the child has lived for a period of at least one year.
- (4) An application for an order under this section may be made by—
 - (a) a person who has applied for the adoption order or in whose favour the adoption order is or has been made,
 - (b) the child, or
 - (c) any person who has obtained the court’s leave to make the application.
- (5) In deciding whether to grant leave under subsection (4)(c), the court must consider the child’s welfare and any other factors it considers appropriate.
- (6) The period of one year mentioned in subsection (3)(e) need not be continuous but must not have begun more than 5 years before the making of the application.
- (7) Where this section applies, an order under section 11 of the 2001 Act may not make provision about contact between the child and any person who may be named in an order under this section.
- (8) “**Indirect contact**” means contact which is —
 - (a) typically an ongoing exchange of correspondence (letters, cards and photographs) whether or not through an adoption agency acting as an intermediary;
 - (b) facilitated by an adoption agency, and
 - (b) conducted at agreed intervals.

PART 7 – DISCLOSURE OF INFORMATION

DIVISION 1: INTRODUCTORY AND GENERAL

54 **Introductory**

This Part deals with the disclosure of information and provides that—

- (a) information prescribed in regulations is to be disclosed to prospective adopters;
- (b) an adoption agency must keep such information as is prescribed in regulations;
- (c) the disclosure of information classed as “protected” is to be restricted;
- (d) information not classed as “protected” may be disclosed in certain circumstances;
- (e) certain “protected” information about adults and children may be disclosed in certain circumstances;

- (f) certain information may be disclosed to an adopted person who has attained the age of 18;
- (g) regulations may be made to deal with counselling and governing the disclosure of information more generally.

55 Disclosing information during adoption process

P2002/38/52

- (1) Regulations under section 10 may require adoption agencies in prescribed circumstances to disclose in accordance with the regulations prescribed information to prospective adopters.
- (2) References to “regulations” in this Part are to regulations under section 10.

56 Information to be kept about a person’s adoption

P2002/38/56

- (1) In relation to an adopted person, regulations may prescribe —
 - (a) the information which an adoption agency must keep in relation to that person’s adoption;
 - (b) the form and manner in which it must keep that information.
- (2) In this Part, any information kept by an adoption agency by virtue of subsection (1)(a) is referred to as “**section 56 information**”.
- (3) Regulations may provide for the transfer in prescribed circumstances of information held, or previously held, by an adoption agency to another adoption agency.

DIVISION 2: PROTECTED INFORMATION AND DISCLOSURE

57 Restrictions on disclosure of protected etc. information

P2002/38/57

- (1) Any section 56 information kept by an adoption agency which —
 - (a) is about an adopted person or any other person, and
 - (b) is or includes identifying information about the person in question,may only be disclosed by the agency to a person (other than the person the information is about) in pursuance of this Part.
- (2) Any information kept by an adoption agency —
 - (a) which the agency has obtained from the Chief Registrar on an application under section 99(5) and any other information which would enable the adopted person to obtain a certified copy of the record of that person’s birth, or

- (b) which is information about an entry relating to the adopted person in the Adoption Contact Register,
- may only be disclosed to a person by the agency in pursuance of this Part.
- (3) In this Part, information the disclosure of which to a person is restricted by virtue of subsection (1) or (2) is referred to (in relation to that person) as “protected information”.
- (4) Identifying information about a person means information which, whether taken on its own or together with other information disclosed by an adoption agency, identifies the person or enables the person to be identified.
- (5) This section does not prevent the disclosure of protected information in pursuance of a prescribed agreement to which the adoption agency is a party.
- (6) Regulations may authorise or require an adoption agency to disclose protected information to a person who is not an adopted person.
- (7) Regulations may provide that an approved adoption agency which discloses any information in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) Proceedings for an offence under this section—
- (a) may not be brought more than 6 years after the commission of the offence but, subject to that,
- (b) may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge.

58 **Disclosing protected information about adults**

P2002/38/57

- (1) This section applies where—
- (a) a person applies to the appropriate adoption agency for protected information to be disclosed to them, and
- (b) none of the information is about a person who is a child at the time of the application.
- (2) The agency is not required to proceed with the application unless it considers it appropriate to do so.
- (3) If the agency does proceed with the application it must take all reasonable steps to obtain the views of any person the information is about as to the disclosure of the information about them.

- (4) The agency may then disclose the information if it considers it appropriate to do so.
- (5) In deciding whether it is appropriate to proceed with the application or disclose the information, the agency must consider—
 - (a) the welfare of the adopted person,
 - (b) any views obtained under subsection (3),
 - (c) any prescribed matters,and all the other circumstances of the case.
- (6) This section does not apply to a request for information under section 60(2) or to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of section 57(6).

59 **Disclosing protected information about children**

P2002/38/57

- (1) This section applies where—
 - (a) a person applies to the appropriate adoption agency for protected information to be disclosed to them, and
 - (b) any of the information is about a person who is a child at the time of the application.
- (2) The agency is not required to proceed with the application unless it considers it appropriate to do so.
- (3) If the agency does proceed with the application, then, so far as the information is about a person who is at the time a child, the agency must take all reasonable steps to obtain—
 - (a) the views of any parent or guardian of the child, and
 - (b) the views of the child, if the agency considers it appropriate to do so having regard to the child's age and understanding and to all the other circumstances of the case,as to the disclosure of the information.
- (4) And, so far as the information is about a person who has at the time attained the age of 18 years, the agency must take all reasonable steps to obtain their views as to the disclosure of the information.
- (5) The agency may then disclose the information if it considers it appropriate to do so.
- (6) In deciding whether it is appropriate to proceed with the application, or disclose the information, where any of the information is about a person who is at the time a child—

- (a) if the child is an adopted child, the child's welfare must be the paramount consideration,
 - (b) in the case of any other child, the agency must have particular regard to the child's welfare.
- (7) And, in deciding whether it is appropriate to proceed with the application or disclose the information, the agency must consider —
- (a) the welfare of the adopted person (where subsection (6)(a) does not apply);
 - (b) any views obtained under subsection (3) or (4);
 - (c) any prescribed matters,
- and all the other circumstances of the case.
- (8) This section does not apply to a request for information under section 60(2) or to a request for information which the agency is authorised or required to disclose in pursuance of regulations made by virtue of section 57(6).

DIVISION 3: ADDITIONAL PROVISIONS ON DISCLOSURE AND COUNSELLING

60 **Disclosing information to adopted adult**

- (1) This section applies to an adopted person who has attained the age of 18 years.
- (2) The adopted person has the right, at their request, to receive from the appropriate adoption agency —
 - (a) any information which would enable that person to obtain a certified copy of the record of their birth, unless the court orders otherwise,
 - (b) any prescribed information disclosed to the adopters by the agency by virtue of section 56.
- (3) The court may make an order under subsection (2)(a), on an application by the adoption agency, if satisfied that the circumstances are exceptional.

61 **Disclosure of other information**

- (1) This section applies to any section 56 information other than protected information.
- (2) An adoption agency may for the purposes of its functions disclose to any person in accordance with prescribed arrangements any information to which this section applies.
- (3) An adoption agency must, in prescribed circumstances, disclose prescribed information to a prescribed person.

- (4) The adopted person also has the right, at their request, to receive from the court which made the adoption order a copy of any prescribed document or prescribed order relating to the adoption.
- (5) Subsection (4) does not apply to a document or order so far as it contains information which is protected information.

62 **Counselling**

- (1) An adoption agency must give information about the availability of counselling to persons—
 - (a) seeking information from the agency in pursuance of this Part,
 - (b) considering objecting or consenting to the disclosure of information by the agency in pursuance of this Part, or
 - (c) considering entering with the agency into an agreement prescribed for the purposes of section 57(5).
- (2) An adoption agency must make arrangements to secure the provision of counselling for persons seeking information from it in prescribed circumstances in pursuance of this Part.
- (3) An adoption agency may —
 - (a) disclose information which is required for the purposes of such counselling to the persons providing the counselling;
 - (b) where the person providing the counselling is outside the Island, require a prescribed fee to be paid.
- (4) The following persons may provide counselling for the purposes of arrangements under subsection (2)—
 - (a) the Department;
 - (b) any other Department;
 - (c) an approved adoption agency;
 - (d) an equivalent to any of the persons referred to in paragraphs (a) to (c);
 - (e) any other prescribed person.
- (5) Counselling must include —
 - (a) explaining to a prospective adopter the procedure in relation to, and the legal implications of, placement for adoption and adoption;
 - (b) providing a prospective adopter with information about the agency's procedures in relation to the assessment of a prospective adopter;
 - (c) explaining the skills which are necessary for an adoptive parent;
 - (d) explaining the significance of adoption for the child and the child's family;

- (e) providing a prospective adopter with written information about the matters referred to paragraph (a) to (d));
- (f) providing a prospective adopter with any information and any training materials relating to adopting a child which are available for that purpose.

DIVISION 4: REGULATIONS

63 **Other provision to be made by regulations**

- (1) Regulations may make provision for the purposes of this Part, including provision as to—
 - (a) the performance by adoption agencies of their functions,
 - (b) the manner in which information may be received, and
 - (c) the matters mentioned in this section.
- (2) Regulations may prescribe—
 - (a) the manner in which agreements made by virtue of section 57(5) are to be recorded;
 - (b) the information to be provided by any person on an application for the disclosure of information under this Part.
- (3) Regulations may require adoption agencies—
 - (a) to give to prescribed persons prescribed information about the rights or opportunities to obtain information, or to give their views as to its disclosure, given by this Part;
 - (b) to seek prescribed information from, or give prescribed information to, the Chief Registrar in prescribed circumstances.
- (4) Regulations may require the Chief Registrar—
 - (a) to disclose to any person (including an adopted person) at that person's request any information which the person requires to assist them to make contact with the adoption agency which is the appropriate adoption agency in the case of an adopted person specified in the request (or, as the case may be, in the applicant's case);
 - (b) to disclose to the appropriate adoption agency any information which the agency requires about any entry relating to the adopted person on the Adoption Contact Register.
- (5) Regulations may provide for the payment of a prescribed fee in respect of the disclosure in prescribed circumstances of any information in pursuance of section 58, 59 or 60.
- (6) An adopted person ("A") may not be required to pay any fee in respect of any information disclosed to A in relation to any person

who (but for A's adoption) would be related to A by blood (including half-blood), marriage or civil partnership.

- (7) Regulations may, subject to Treasury concurrence, provide for the payment of a prescribed fee by an adoption agency obtaining information under subsection (4)(b).

64 Regulations: Chief Registrar approval

Regulations making any provision as to the manner in which any application is to be made for the disclosure of information by the Chief Registrar require the Chief Registrar's approval.

PART 8 -SUPPLEMENTAL AND MISCELLANEOUS

DIVISION 1: INTRODUCTORY

65 Introductory

This Part deals with a range of matters connected to adoption and the adoption process, covering (inter alia) —

- (a) inspections and reviews;
- (b) restrictions on arranging adoptions and making reports;
- (c) payments (prohibitions and exemptions);
- (d) various procedural and evidential matters.

DIVISION 2: INSPECTIONS AND REVIEWS

66 Inspection of premises etc.

P2002/38/15

- (1) The Department may arrange for any premises in which —
- (a) a child is living with a person with whom the child has been placed by—
 - (i) the Department, and
 - (ii) an approved adoption society; or
 - (b) a child in respect of whom a notice of intention to adopt has been given under section 26 is, or will be, living,
- to be inspected from time to time.
- (2) The Department may require an approved adoption agency—
- (a) to give it any information, or
 - (b) to allow it to inspect any records (in whatever form they are held),

relating to the discharge of any of the agency's activities in relation to adoption which the Department specifies.

- (3) An inspection under this section in relation to an approved adoption agency must be conducted by a person authorised by the Department ("an inspector").
- (4) An inspection under this section in relation to the Department must be conducted by a person authorised by the Council of Ministers ("an inspector").
- (5) An inspector inspecting any premises under subsection (1) may —
 - (a) visit the child there;
 - (b) make any examination into the state of the premises and the treatment of the child there which the inspector thinks fit.
- (6) An inspector authorised to inspect any records under this section may at any reasonable time have access to, and inspect and check the operation of, any computer (and associated apparatus) which is being or has been used in connection with the records in question.
- (7) An inspector authorised to inspect any premises or records under this section may —
 - (a) enter the premises for that purpose at any reasonable time;
 - (b) require any person to give the inspector any reasonable assistance the inspector may require.
- (8) A person exercising a power under this section must, if required to do so, produce a duly authenticated document showing that person's authority.
- (9) Any person who intentionally obstructs another in the exercise of a power under this section commits an offence.

Maximum penalty — (summary) a fine of level 4 on the standard scale.

67 Independent review of determinations

P2002/38/12 and drafting

- (1) Regulations under section 10 may establish a procedure under which any person in respect of whom a qualifying determination has been made by an adoption agency may apply to the agency for a review of that determination by a panel constituted by regulations made under section 10.
- (2) The regulations must make provision as to the description of determinations which are qualifying determinations for the purposes of subsection (1).
- (3) The regulations may include provision as to —
 - (a) the duties and powers of a panel;

- (b) the administration and procedures of a panel;
 - (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment);
 - (d) the payment of fees to members of a panel;
 - (e) the duties of agencies in connection with reviews conducted under the regulations;
 - (f) the monitoring of any such reviews.
- (4) Regulations made by virtue of subsection (3)(e) may impose a duty to pay to an adoption agency such sum as the agency may determine.
 - (5) An adoption agency must secure that, taking one financial year with another, the aggregate of the sums which become payable to it under regulations made by virtue of subsection (4) does not exceed the cost to the agency of performing its independent review functions.
 - (6) An adoption agency may make an arrangement with an organisation under which independent review functions are performed by the organisation on its behalf.
 - (7) Where an adoption agency makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by the agency.
 - (8) The arrangement may include provision for payments to be made to the organisation by the agency.
 - (9) Payments made by an adoption agency in accordance with such provision shall be taken into account in determining (for the purpose of subsection (5)) the cost to the agency of performing its independent review functions.
 - (10) In this section—

“financial year” means a period of 12 months ending with 31st March;

“independent review function” means a function conferred or imposed on an adoption agency by regulations made by virtue of this section;

“organisation” includes a public body and a private or voluntary organisation.

DIVISION 3: RESTRICTIONS, PROHIBITIONS AND EXEMPTIONS

68 **Restriction on arranging adoptions etc.**

P2002/38/92

- (1) A person who is neither an adoption agency nor acting in pursuance of an order of the court must not take any of the steps mentioned in subsection (2).

- (2) The steps are—
- (a) asking a person other than an adoption agency to provide a child for adoption;
 - (b) asking a person other than an adoption agency to provide prospective adopters for a child;
 - (c) offering to find a child for adoption;
 - (d) offering a child for adoption to a person other than an adoption agency;
 - (e) handing over a child to any person other than an adoption agency with a view to the child’s adoption by that or another person;
 - (f) receiving a child handed over in contravention of paragraph (e);
 - (g) entering into an agreement with any person for the adoption of a child, or for the purpose of facilitating the adoption of a child, where no adoption agency is acting on behalf of the child in the adoption;
 - (h) initiating or taking part in negotiations of which the purpose is the conclusion of an agreement within paragraph (g);
 - (i) causing another person to take any of the steps mentioned in paragraphs (a) to (h).
- (3) Subsection (1) does not apply to a person taking any of the steps mentioned in paragraphs (d), (e), (g), (h) and (i) of subsection (2) if the following condition is met.
- (4) The condition is that the person is —
- (a) a prospective adopter who is a parent, relative or guardian of the child (or, in the case of more than one prospective adopter, one of them is), or
 - (b) the prospective adopter is the partner of a parent of the child.
- (5) References to an adoption agency in subsection (2) include a prescribed person outside the Island exercising functions corresponding to those of an adoption agency, if the functions are being exercised in prescribed circumstances in respect of the child in question.
- (6) The Department may, by order make any amendments of subsections (1) to (4), and any consequential amendments of this Act, which it considers necessary or expedient.
- (7) In this section—
- “agreement” includes an arrangement (whether or not enforceable);
- “prescribed” means prescribed by regulations made by the Department.

69 Offence of breaching restrictions under section 68

P2002/38/93

- (1) If a person (“P”) contravenes section 68(1), P commits an offence; and, if P is an approved adoption society, the person who manages the society is also guilty of the offence.

Maximum penalty – (summary) 6 months’ custody, a fine or both.

- (2) P does not commit an offence under subsection (1) of taking the step mentioned in paragraph (f) of section 68(2) unless it is proved that P knew or had reason to suspect that the child was handed over to P in contravention of paragraph (e) of that subsection.
- (3) P is not guilty of an offence under subsection (1) of causing a person to take any of the steps mentioned in paragraphs (a) to (h) of section 68(2) unless it is proved that P knew or had reason to suspect that the step taken would contravene the paragraph in question.
- (4) But subsections (2) and (3) only apply if sufficient evidence is adduced to raise an issue as to whether P had the knowledge or reason mentioned.

70 **Restriction on reports**

P2002/38/94

- (1) A person who is not within a prescribed description may not, in any prescribed circumstances prepare a report for any person about –
 - (a) the suitability of a child for adoption,
 - (b) the suitability of a person to adopt a child,
 - (c) the adoption of a child, or
 - (d) the placement for adoption of a child.

Maximum penalty – (summary) 6 months’ custody, a fine of level 5 on the standard scale or both.

- (2) “Prescribed” means prescribed by regulations made by the Department.
- (3) A person who—
 - (a) contravenes subsection (1), or
 - (b) causes a person to prepare a report, or submits to any person a report which has been prepared, in contravention of that subsection,commits an offence.
- (4) If a person who works for an approved adoption society—
 - (a) contravenes subsection (1), or
 - (b) causes a person to prepare a report, or submits to any person a report which has been prepared, in contravention of that subsection,

the person who manages the society also commits an offence.

- (5) A person is not guilty of an offence under subsection (3)(b) unless it is proved that the person knew or had reason to suspect that the report would be, or had been, prepared in contravention of subsection (1).
- (6) Subsection (5) only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned in that subsection.
- (7) Proceedings for an offence under this section—
 - (a) may not be brought more than 6 years after the commission of the offence but, subject to that,
 - (b) may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.

71 **Prohibition of certain payments**

P2002/38/95

- (1) This section applies to any payment (other than an excepted payment) which is made for or in consideration of—
 - (a) the adoption of a child;
 - (b) giving any consent required in connection with the adoption of a child;
 - (c) removing from the Island a child who is a Commonwealth citizen, or is habitually resident in the Island, to a place outside the British Islands for the purpose of adoption;
 - (d) a person (who is neither an adoption agency nor acting in pursuance of an order of the court) taking any step mentioned in section 68(2);
 - (e) preparing, causing to be prepared or submitting a report the preparation of which contravenes section 70(1).
- (2) In this section removing a child from the Island has the same meaning as in section 105.
- (3) Any person who—
 - (a) makes any payment to which this section applies,
 - (b) agrees or offers to make any such payment, or
 - (c) receives or agrees to receive or attempts to obtain any such payment,
 commits an offence.

Maximum penalty – (summary) 6 months' custody, a fine of level 5 on the standard scale or both.

- (4) Proceedings for an offence under this section—

- (a) may not be brought more than 6 years after the commission of the offence but, subject to that,
- (b) may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.

72 Excepted payments

P2002/38/96

- (1) A payment is an excepted payment if it is made by virtue of, or in accordance with provision made by or under, this Act, the Adoption and Children Act 2002 (of Parliament), the Adoption (Scotland) Act 1978 (c. 28) the Adoption and Children (Scotland) Act 2007 (asp 4) or the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).
- (2) A payment is an excepted payment if it is made to an approved adoption agency by—
 - (a) a parent or guardian of a child, or
 - (b) a person who adopts or proposes to adopt a child,in respect of expenses reasonably incurred by the agency in connection with the adoption or proposed adoption of the child.
- (3) A payment is an excepted payment if it is made in respect of any legal or medical expenses incurred or to be incurred by any person in connection with an application to a court which that person has made or proposes to make for an adoption order, a placement order, or an order under section 36, 53 or 104.
- (4) A payment made as mentioned in section 71(1)(c) is an excepted payment if—
 - (a) the condition in section 105(2) is met; and
 - (b) the payment is made in respect of the travel and accommodation expenses reasonably incurred in removing the child from the Island (within the meaning of section 105) for the purpose of adoption.

73 Sections 68 to 72: interpretation

In sections 68 to 72—

- (a) “**adoption agency**” includes a Scottish or Northern Irish adoption agency;
- (b) “**payment**” includes reward;
- (c) references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.

DIVISION 4: PROCEEDINGS AND EVIDENCE ETC.

74 Privacy

P2002/38/101

Court proceedings under this Act may be heard and determined in private.

75 Evidence of consent

P2002/38/104

- (1) If a document signifying any consent which is required by this Part to be given is witnessed in accordance with rules, it is to be admissible in evidence without further proof of the signature of the person by whom it was executed.
- (2) A document signifying any such consent which purports to be witnessed in accordance with rules is to be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

76 Use of adoption records from other parts of the British Islands

P2002/38/107

Any document which is receivable as evidence of any matter —

- (a) in England and Wales under section 107 of the Adoption and Children Act 2002,
- (b) in Scotland under section 56(1) or (2) of the Adoption and Children (Scotland) Act 2007 (asp 4) (admissibility of extracts as evidence),
- (c) in Northern Ireland under Article 63(1) of the Adoption (Northern Ireland) Order 1987, or
- (d) in the Channel Islands under an enactment corresponding to section 75(3) of this Act,

is also receivable as evidence of that matter in the Island.

77 United Kingdom

- (1) Regulations may provide —
 - (a) for a reference in any provision of this Act to an order of a court to include an order of a court in the United Kingdom which appears to the Department to correspond in its effect to the order in question;
 - (b) for a reference in any provision of this Act to an adoption agency to include a person who appears to the Department to exercise functions under the law of the United Kingdom which correspond

to those of an adoption agency and for any reference in any provision of this Act to a child placed for adoption by an adoption agency to be read accordingly;

- (c) for a reference in any provision of this Act to an enactment (including an enactment contained in this Act) to include a provision of the law of the United Kingdom which appears to the Department to correspond in its effect to the enactment;
 - (d) for any reference in any provision of this Act to the Island to include the United Kingdom.
- (2) Regulations may modify any provision of this Act, as it applies to any order made, or other thing done, under the law of the United Kingdom.
- (3) In this section, “regulations” means regulations made by the Department.

78 **Avoiding delay**

P2002/38/109

- (1) In proceedings in which a question may arise as to whether an adoption order or placement order should be made, or any other question with respect to such an order, the court must (in the light of any provision in rules of court that is of the kind mentioned in subsection (2)(a) or (b))—
- (a) draw up a timetable with a view to determining such a question without delay, and
 - (b) give such directions as it considers appropriate for the purpose of ensuring that the timetable is adhered to.
- (2) Rules may—
- (a) prescribe periods within which prescribed steps must be taken in relation to such proceedings, and
 - (b) make other provision with respect to such proceedings for the purpose of ensuring that such questions are determined without delay.

79 **Service of notices etc.**

P2002/38/110

Any notice or information required to be given by virtue of this Act may be given by post.

DIVISION 5: MISCELLANEOUS

80 **Revocation of adoptions on legitimation**

P2002/38/55

Where any child adopted by one natural parent as sole adoptive parent subsequently becomes a legitimated person on the marriage of the natural parents, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke the order.

Information

81 **Pre-commencement adoptions: information**

P2002/38/98

- (1) Regulations under section 10 may make provision for the purpose of—
 - (a) assisting persons adopted before the appointed day who have attained the age of 18 to obtain information in relation to their adoption, and
 - (b) facilitating contact between such persons and their relatives.
- (2) Regulations under section 10 may make provision for the purpose of facilitating contact between persons with a prescribed relationship to a person adopted before the appointed day and that person's relatives.
- (3) For a purpose within subsection (1) or (2) the regulations may confer functions on—
 - (a) the Department;
 - (b) the Chief Registrar;
 - (c) adoption agencies.
- (4) For a purpose within subsection (1) or (2) the regulations may—
 - (a) authorise or require any person mentioned in subsection (3) to disclose information;
 - (b) authorise or require the disclosure of information contained in records kept under section 5 of the *Public Records Act 1999* (court records),

and may impose conditions on the disclosure of information, including conditions restricting its further disclosure.
- (5) The regulations may authorise the charging of prescribed fees by any person mentioned in subsection (2) or in respect of the disclosure of information under subsection (4)(b).
- (6) An authorisation or requirement to disclose information by virtue of subsection (4)(a) has effect in spite of any restriction on the disclosure of information in Part 7.
- (7) The making of regulations by virtue of subsections (2) to (4) which relate to the Chief Registrar requires the approval of the Secretary of State.
- (8) In this section—

“appointed day” means the day appointed for the commencement of sections 57 to 65;

“prescribed” means prescribed by regulations under section 10;

“relative”, in relation to an adopted person (“A”), means any person who (but for A’s adoption) would be related to A by blood (including half-blood), marriage or civil partnership.

PART 9 - STATUS OF ADOPTED CHILDREN

DIVISION 1: INTRODUCTORY AND INTERPRETATION

82 **Introductory**

This Part deals with—

- (a) the legal status conferred on an adopted child by reason of their adoption;
- (b) the establishment and recognition of adoptive relationships between an adopted child and others;
- (c) the rules relating to the disposition and inheritance of property and titles by an adopted person.

83 **Meaning of adoption in this Part**

- (1) In this Part “**adoption**” means—
 - (a) adoption by an adoption order made in the Island, England, Wales, Scotland or Northern Ireland,
 - (b) an adoption effected under the law of a Convention country outside the British Islands, and certified in pursuance of Article 23(1) of the Convention (referred to in this Act as a “**Convention adoption**”),
 - (d) an overseas adoption, or
 - (e) an adoption recognised by the law of the Island and effected under the law of any other country or territory,and related expressions are to be interpreted accordingly.
- (2) References in this Part to adoption include, where the context permits, an adoption effected before the day on which this Part comes into force (referred to in this Part as “**the appointed day**”).
- (3) Any reference in an enactment to an adopted person within the meaning of this Part includes a reference to an adopted child within the meaning of Part 3 of the *Adoption Act 1984*.

DIVISION 2: STATUS AND RELATIONSHIPS

84 Status conferred by adoption

P2002/38/67

- (1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.
- (2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by—
 - (a) a couple, or
 - (b) one of a couple under section 33(2),is to be treated as the child of the relationship of the couple in question.
- (3) An adopted person—
 - (a) if adopted by one of a couple under section 33(2), is to be treated in law as not being the child of any person other than the adopter and the other one of the couple, and
 - (b) in any other case, is to be treated in law, subject to subsection (5), as not being the child of any person other than the adopters or adopter.
- (4) But subsection (3) does not affect any reference in this Act to a person's natural parent or to any other natural relationship.
- (5) In the case of a person adopted by one of the person's natural parents as sole adoptive parent, subsection (3)(b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.
- (6) This section has effect from the date of the adoption.
- (7) Subject to the provisions of this Part and Schedule 3, this section—
 - (a) applies, subject to any contrary indication, for the interpretation of enactments or instruments passed or made —
 - (i) before the adoption, and
 - (ii) after the adoption, and
 - (b) has effect as respects things done, or events occurring, on or after the adoption.

85 Adoptive relatives

P2002/38/68

- (1) A relationship existing by virtue of section 84 may be referred to as an adoptive relationship, and—
 - (a) an adopter may be referred to as an adoptive parent or (as the case may be) as an adoptive father or adoptive mother;

- (b) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree.
- (2) Subsection (1) does not affect the interpretation of any reference, not qualified by the word “adoptive”, to a relationship.
- (3) A reference (however expressed) to the adoptive mother and father of a child adopted by—
 - (a) a couple of the same sex, or
 - (b) a partner of the child’s parent, where the couple are of the same sex, is to be read as a reference to the child’s adoptive parents.

DIVISION 3: PROPERTY, DISPOSITIONS AND RELATED MATTERS

86 Rules of interpretation for instruments concerning property

P2002/38/69

- (1) The rules of interpretation contained in this section apply (subject to any contrary indication and to Schedule 3) to any instrument so far as it contains a disposition of property.
- (2) In applying section 84(1) and (2) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition is to be interpreted as if—
 - (a) the adopted person had been born on the date of adoption;
 - (b) two or more people adopted on the same date had been born on that date in the order of their actual births,

but this does not affect any reference to a person’s age.

- (3) Examples of phrases in wills on which subsection (2) can operate are—
 1. Children of A “living at my death or born afterwards”.
 2. Children of A “living at my death or born afterwards before any one of such children for the time being in existence attains a vested interest and who attain the age of 21 years”.
 3. As in example 1 or 2, but referring to grandchildren of A instead of children of A.
 4. A for life “until he has a child”, and then to his child or children.

Note. Subsection (2) will not affect the reference to the age of 21 years in example 2.

- (4) Section 84(3) does not prejudice—
 - (a) any qualifying interest,
 - (b) any interest expectant (whether immediately or not) upon a qualifying interest, or

- (c) any contingent interest (other than a contingent interest in remainder) which the adopted person has immediately before the adoption in the estate of a deceased parent, whether testate or intestate.
- (5) “Qualifying interest” means an interest vested in possession in the adopted person before the adoption.
- (6) Where it is necessary to determine for the purposes of a disposition of property effected by an instrument whether a woman can have a child—
 - (a) it must be presumed that once a woman has attained the age of 55 years she will not adopt a person after execution of the instrument, and
 - (b) if she does so, then (in spite of section 84) that person is not to 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 the instrument.
- (7) In this section, “instrument” includes a private Act settling property, but not any other enactment.

87 Dispositions depending on date of birth

P2002/38/70

- (1) Where a disposition depends on the date of birth of a person who was born illegitimate and who is adopted by one of the natural parents as sole adoptive parent, section 90(2) does not affect entitlement by virtue of Part 3 of the *Administration of Estates Act 1990*.
- (2) Subsection (1) applies for example where—
 - (a) a testator dies in 2019 bequeathing a legacy to his eldest grandchild living at a specified time;
 - (b) his unmarried daughter has a child in 2020 who is the first grandchild;
 - (c) his married son has a child in 2021;
 - (d) subsequently his unmarried daughter adopts her child as sole adoptive parent.

In that example the status of the daughter’s child as the eldest grandchild of the testator is not affected by the events described in paragraphs (c) and (d).

88 Property devolving with peerages etc.

P2002/38/71

- (1) An adoption does not affect the descent of any peerage or dignity or title of honour.

- (2) An adoption does not affect the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour.
- (3) Subsection (2) applies only if and so far as a contrary intention is not expressed in the instrument, and has effect subject to the terms of the instrument.

89 **Protection of trustees and personal representatives**

P2002/38/72

- (1) This section applies where entitlement to the property may be affected by an adoption taking effect or being revoked (“a relevant event”).
- (2) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire before conveying or distributing any property whether a relevant event has taken place.
- (3) A trustee or personal representative is not liable to any person by reason of a conveyance or distribution of property made without regard to a relevant event if that trustee or personal representative has not received notice of it before the conveyance or distribution.
- (4) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

90 **Meaning of disposition**

P2002/38/73

- (1) This section applies for the purposes of this Part.
- (2) A disposition includes the conferring of a power of appointment and any other disposition of an interest in or right over property.
- (3) For the purposes of subsection (2), a power of appointment includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.
- (4) This Part applies to an oral disposition as if contained in an instrument made when the disposition was made.
- (5) The date of death of a testator is the date at which a will or codicil is to be regarded as made.
- (6) The provisions of the law of intestate succession applicable to the estate of a deceased person (“P”) are to be treated as if contained in an instrument executed by P (while of full capacity) immediately before P’s death.

91 Miscellaneous enactments

P2002/38/74

- (1) Section 84 does not apply for the purposes of—
 - (a) the table of prohibited degrees of affinity in Schedule 1 to the *Marriage Act 1984* or Schedule 1 to the *Civil Partnership Act 2011*, or
 - (b) [Division 15 of the Sexual Offences and Obscene Publications Act 20** (sex with an adult relative)].
- (2) Section 88 does not apply for the purposes of any provision of—
 - (a) the British Nationality Act 1981 (of Parliament),
 - (b) the Immigration Act 1971 (of Parliament) as it has effect in the Island,
 - (c) any instrument having effect under an enactment within paragraph (a) or (b), or
 - (d) any other provision of the law for the time being in force which determines British citizenship, British dependent territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.

92 Pensions

P2002/38/75

Section 88(3) does not affect entitlement to a pension which is payable to or for the benefit of a person and is in payment at the time of the person's adoption.

93 Insurance

P2002/38/76

- (1) Where a child is adopted whose natural parent has effected an insurance with a friendly society or similar body for the payment on the death of the child of money for funeral expenses, then—
 - (a) the rights and liabilities under the policy are by virtue of the adoption transferred to the adoptive parents, and
 - (b) for the purposes of the enactments relating to such societies and bodies, the adoptive parents are to be treated as the person who took out the policy.
- (2) Where the adoption is effected by an order made by virtue of section 33(2), the references in subsection (1) to the adoptive parents are to be read as references to the adopter and the other one of the couple.

PART 10 -THE REGISTERS

DIVISION 1: INTRODUCTORY AND INTERPRETATION

94 **Introductory**

This Part deals with the Chief Registrar's duty to —

- (a) continue to maintain the Adopted Children Register;
- (b) continue to maintain an index to that register;
- (c) make traceable the connection between an entry in particular registers and any corresponding entry in the Adopted Children Register;
- (d) establish and maintain an Adoption Contact Register.

95 **Interpretation**

- (1) In this Part—

“**records**” includes certified copies kept by the Chief Registrar of entries in any register of births;

“**registers of live-births**” means the registers of live-births made under the *Civil Registration Act 1984*.

- (2) Any register, record or index maintained under this Part may be maintained in any form the Chief Registrar considers appropriate; and references (however expressed) to entries in such a register, or to their amendment, marking or cancellation, are to be read accordingly.

DIVISION 2: ADOPTED CHILDREN REGISTER

96 **Adopted Children Register**

P2002/38/77

- (1) The Chief Registrar must continue to maintain in the General Registry the Adopted Children Register.
- (2) The Adopted Children Register is not to be open to public inspection or search.
- (3) No entries may be made in the Adopted Children Register other than entries—
 - (a) directed to be made in it by adoption orders, or
 - (b) required to be made under Schedule 1.
- (4) A certified copy of an entry in the Adopted Children Register, if purporting to be signed by or on behalf of the Chief Registrar, is to be

received as evidence of the adoption to which it relates without further or other proof.

- (5) Where an entry in the Adopted Children Register contains a record—
- (a) of the date of birth of the adopted person, or
 - (b) of the country, or (howsoever expressed) the district and sub-district, of the birth of the adopted person,

a certified copy of the entry is also to be received, without further or other proof, as evidence of that date, or country or district and sub-district, (as the case may be) in all respects as if the copy were a certified copy of an entry in the registers of live-births.

- (6) Schedule 1 (disclosure of birth records by Chief Registrar) has effect.

97 Searches and copies

P2002/38/78

- (1) The Chief Registrar must continue to maintain at the General Registry an index of the Adopted Children Register.
- (2) Where the Chief Registrar is satisfied (having had due regard to any guidance issued by the Department) that it is appropriate to do so, the Chief Registrar may permit any person to—
 - (a) search the index;
 - (b) have a certified copy of any entry in the Adopted Children Register.
- (3) But 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 the applicant has provided the Chief Registrar with the prescribed particulars.
- (4) “Prescribed” means prescribed by regulations made by the Chief Registrar with the approval of the Department.
- (5) The terms, conditions and regulations as to payment of fees, and otherwise, applicable under regulations made under section 43(2) of the *Civil Registration Act 1984*, in respect of—
 - (a) searches in the index kept in the General Registry of certified copies of entries in the registers of live-births;
 - (b) the supply from that office of certified copies of entries in those certified copies,

also apply in respect of searches, and supplies of certified copies, under subsection (2).

98 Connections between the register and birth records

P2002/38/78

- (1) The Chief Registrar must 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.
- (2) Information kept by the Chief Registrar for the purposes of subsection (1) is not to be open to public inspection or search.
- (3) Any such information, 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 Chief Registrar in accordance with this section.
- (4) In relation to a person adopted before the appointed day the court may, in exceptional circumstances, order the Chief Registrar to give any information mentioned in subsection (3) to that person.
- (5) On an application made in the prescribed manner by the appropriate adoption agency in respect of an adopted person a record of whose birth is kept by the Chief Registrar, the Chief Registrar must give the agency any information relating to the adopted person which is mentioned in subsection (3).
- (6) In relation to a person adopted before the appointed day, Schedule 2 applies instead of subsection (5).
- (7) On an application made in the prescribed manner by an adopted person a record of whose birth is kept by the Chief Registrar and who—
 - (a) is under the age of 18 years, and
 - (b) intends to be married or form a civil partnership,

the Chief Registrar must inform the applicant whether or not it appears from information contained in the registers of live-births or other records that the applicant and the intended spouse or civil partner may be within the prohibited degrees of affinity specified in Schedule 1 to the *Marriage Act 1984* or Schedule 1 to the *Civil Partnership Act 2011*.

- (8) Before the Chief Registrar gives any information by virtue of this section, any prescribed fee which the Chief Registrar has demanded must be paid.
- (9) In this section—

“appointed day” means the day appointed for the commencement of Part 7;

“prescribed” means prescribed by regulations made by the Chief Registrar with the approval of the Department.

DIVISION 3: ADOPTION CONTACT REGISTER

99 **Adoption Contact Register**

P2002/38/80

- (1) The Chief Registrar must establish and maintain at the General Registry in accordance with regulations a register to be called the Adoption Contact Register.
- (2) The register is to consist of 2 Parts.
- (3) Part 1 of the register is to contain the prescribed information about an adopted person who has given the prescribed notice expressing their wishes as to making contact with their relatives.
- (4) The Chief Registrar may only make an entry in Part 1 of the register for an adopted person—
 - (a) a record of whose birth is kept by the Chief Registrar,
 - (b) who has attained the age of 18 years, and
 - (c) who the Chief Registrar is satisfied has such information as is necessary to enable that person to obtain a certified copy of the record of that person's birth.
- (5) Part 2 of the register is to contain the prescribed information about a person who, as a relative of adopted person, has given the prescribed notice expressing their wishes as to making contact with an adopted person.
- (6) The Chief Registrar may only make an entry in Part 2 of the register for a person—
 - (a) who has attained the age of 18 years, and
 - (b) who the Chief Registrar is satisfied is a relative of an adopted person and has such information as is necessary to enable that person to obtain a certified copy of the record of the adopted person's birth.
- (7) The Chief Registrar in consultation with the Department may disclose information contained in one Part of the register to persons for whom there is an entry in the other Part.
- (8) Regulations may make provision relating to —
 - (a) the disclosure of information referred to in subsection (7);
 - (b) the payment of prescribed fees in respect of the making or alteration of entries in the register and the disclosure of information contained in the register.
- (9) In this section —

“prescribed” means prescribed by such regulations;

“regulations” means regulations made by the Chief Registrar with the approval of the Department.

100 Adoption Contact Register: supplementary

P2002/38/81

- (1) The Adoption Contact Register is not to be open to public inspection or search.
- (2) In section 99, “relative”, in relation to an adopted person (“A”), means any person who (but for A’s adoption) would be related to A by blood (including half-blood), marriage or civil partnership.
- (3) The Chief Registrar must not give any information entered in the register to any person except in accordance with subsection (6)(a) of that section or regulations made by virtue of section 64(4)(b).

PART 11 - ADOPTIONS WITH A FOREIGN ELEMENT

DIVISION 1: INTRODUCTORY

101 Introductory

This Part deals with adoptions with a foreign element and covers—

- (a) restrictions on bringing a child into the Island for adoption by a British resident;
- (b) court orders giving parental responsibility in respect of a child adopted under the laws of another country or territory;
- (c) restrictions on taking a child out of the Island for the purposes of adoption;
- (d) the requirements necessary for an adoption to be treated as an overseas adoption;
- (e) the modification that can be made in respect of Hague Convention adoptions;
- (f) the annulment of such adoptions;
- (g) fees in respect of overseas adoptions.

DIVISION 2: BRINGING CHILDREN INTO AND OUT OF THE ISLAND

102 Restriction on bringing children in

P2002/38/83

- (1) This section applies where a person who is habitually resident in the British Islands (the “British resident”)—

-
- (a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the Island for the purpose of adoption by the British resident, or
 - (b) at any time brings, or causes another to bring, into the Island a child adopted by the British resident under an external adoption effected within the period of 12 months ending with that time.
 - (2) The references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to a child adopted, by the British resident and another person.
 - (3) But this section does not apply if the child is intended to be adopted under a Convention adoption order.
 - (4) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outside the British Islands, whether or not the adoption is—
 - (a) an adoption within the meaning of Part 9, or
 - (b) a full adoption (within the meaning of section 108(3)).
 - (5) Regulations may require a person intending to bring, or to cause another to bring, a child into the Island in circumstances where this section applies—
 - (a) to apply to an adoption agency in the prescribed manner for an assessment of that person's suitability to adopt the child, and
 - (b) to give the agency any information it may require for the purpose of the assessment.
 - (6) Regulations may require prescribed conditions to be met in respect of a child brought into the Island in circumstances where this section applies.
 - (7) In relation to a child brought into the Island for adoption in circumstances where this section applies, regulations may—
 - (a) provide for any provision of Part 3 to apply with modifications or not to apply;
 - (b) if notice of intention to adopt has been given, impose functions in respect of the child on the local authority to which the notice was given.
 - (8) If a person brings, or causes another to bring, a child into the Island at any time in circumstances where this section applies, that person commits an offence if—
 - (a) that person has not complied with any requirement imposed by virtue of subsection (5), or
 - (b) any condition required to be met by virtue of subsection (6) is not met, before that time, or before any later time which may be prescribed.

Maximum penalty —

(summary) 6 month's custody, a fine on level 5 of the standard scale or both;

(information) 12 month's custody, a fine or both.

(9) In this section —

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department.

103 Power to charge

P2002/38/91A

- (1) This section applies to adoptions to which section 102 applies.
- (2) The Department may charge a fee to adopters for services provided or to be provided by it in relation to adoptions to which this section applies.
- (3) The Department may determine the level of fee as it sees fit, and may in particular —
 - (a) charge a flat fee or charge different fees in different cases or descriptions of case, and
 - (b) in any case or description of case, waive a fee.
- (4) But the Department must secure that, taking one financial year with another, the income from fees under this section does not exceed the total cost to it of providing the services in relation to which the fees are imposed.
- (5) In this section —
 - (a) references to adoptions and adopters include prospective adoptions and prospective adopters,
 - (b) “financial year” means a period of 12 months ending with 31st March.

104 Giving parental responsibility prior to adoption abroad

P2002/38/84

- (1) The court may, on an application by persons who the court is satisfied intend to adopt a child under the law of a country or territory outside the Island, make an order giving parental responsibility for the child to them.
- (2) An order under this section may not give parental responsibility to persons who the court is not satisfied meet those requirements as to domicile, or habitual residence, in the Island which have to be met if an adoption order is to be made in favour of those persons.

- (3) An order under this section may not be made unless any requirements prescribed by regulations are satisfied.
- (4) An application for an order under this section may not be made unless at all times during the preceding ten weeks the child's home was with the applicant or, in the case of an application by two people, both of them.
- (5) Section 28(2) to (4) has effect in relation to an order under this section as it has effect in relation to adoption orders.
- (6) Sections 96 to 98 shall apply in relation to an order under this section as they apply in relation to an adoption order, except that any entry in the registers of births kept under the *Civil Registration Act 1984* or the Adopted Children Register which is required to be marked in consequence of the making of an order under this section shall, instead of being marked with the word "Adopted" or "Re-adopted" be marked with the words "Proposed foreign adoption" or "Proposed foreign readoption", as the case may require.
- (7) Regulations may provide for any provision of this Act which refers to adoption orders to apply, with or without modifications, to orders under this section.
- (8) In this section, "regulations" means regulations made by the Chief Registrar after consultation with the Department.

105 Restriction on taking children out

P2002/38/85

- (1) A child who—
 - (a) is a citizen of the Republic of Ireland, or
 - (b) is habitually resident in the British Islands,
 must not be removed from the Island to a place outside the British Islands for the purpose of adoption unless the condition in subsection (2) is met.
- (2) The condition is that—
 - (a) the prospective adopters have parental responsibility for the child by virtue of an order under section 104, or
 - (b) the child is removed under the authority of an order under —
 - (i) this Act,
 - (ii) section 85 of the Adoption and Children Act 2001 (of Parliament),
 - (iii) section 59 of the Adoption and Children (Scotland) Act 2007 (asp 4), or

- (iv) Article 57 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).
- (3) Removing a child from the Island includes arranging to do so.
- (4) The circumstances in which a person arranges to remove a child from the Island include those where that person—
 - (a) enters into an arrangement for the purpose of facilitating such a removal of the child,
 - (b) initiates or takes part in any negotiations of which the purpose is the conclusion of an arrangement within paragraph (a), or
 - (c) causes another person to take any step mentioned in paragraph (a) or (b).
- (5) An arrangement includes an agreement (whether or not enforceable).
- (6) A person who removes a child from the Island in contravention of subsection (1) commits an offence.

Maximum penalty —

(summary) 6 month's custody, a fine of level 5 on the standard scale or both;

(information) 12 month's custody, a fine or both.

- (7) A person is not guilty of an offence under subsection (6) of causing a person to take any step mentioned in paragraph (a) or (b) of subsection (4) unless it is proved that person knew or had reason to suspect that the step taken would contravene subsection (1).
- (8) Subsection (6) only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.
- (9) In any proceedings under this section—
 - (a) a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible, upon proof that the officer or the deponent cannot be found in the British Islands, as evidence of the matters stated in it, and
 - (b) it is not necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.

106 Power to modify sections 102 and 104

P2002/38/86

- (1) Regulations may provide for section 102 not to apply if—
 - (a) the adopters or (as the case may be) prospective adopters are natural parents, natural relatives or guardians of the child in question (or one of them is), or

- (b) the British resident in question is a partner of a parent of the child, and any prescribed conditions are met.
- (2) Regulations may provide for section 104(1) to apply with modifications, or not to apply, if—
 - (a) the prospective adopters are parents, relatives or guardians of the child in question (or one of them is), or
 - (b) the prospective adopter is a partner of a parent of the child, and any prescribed conditions are met.
- (3) In this section —
 - “prescribed” means prescribed by regulations;
 - “regulations” means regulations made by the Department.

DIVISION 3: OVERSEAS ADOPTIONS

107 Overseas adoptions

P2002/38/87

- (1) 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.
- (2) At any time when such regulations have effect, the Department must exercise its powers under this section so as to secure that subsequently effected adoptions of any description are not overseas adoptions for the purposes of this Act if the Department considers that they are not likely within a reasonable time to meet the prescribed requirements.
- (3) In this section references to this Act include the *Adoption Act 1984*.
- (4) An order under this section may contain provision as to the manner in which evidence of any overseas adoption may be given.
- (5) In this section—
 - “adoption” means an adoption of a child or of a person who was a child at the time the adoption was applied for;
 - “regulations” means regulations made by the Department.

Miscellaneous

108 Modification of section 88 for Hague Convention adoptions

P2002/38/88

- (1) If the court is satisfied, on an application under this section, that each of the following conditions is met in the case of a Convention adoption, it may direct that section 107(2) does not apply, or does not apply to any extent specified in the direction.
- (2) The conditions are—
 - (a) that under the law of the country in which the adoption was effected, the adoption is not a full adoption;
 - (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention);
 - (c) that it would be more favourable to the adopted child for a direction to be given under subsection (1).
- (3) A full adoption is an adoption by virtue of which the child is to be treated in law as not being the child of any person other than the adopters or adopter.
- (4) In relation to a direction under this section and an application for it, section 10A of the *Legitimacy Act 1985* (declarations as to parentage) apply as they apply in relation to a direction under that section and an application for such a direction.

109 **Annulment etc. of overseas or Hague Convention adoptions**

P2002/38/89

- (1) The court may, on an application under this subsection, by order annul a Convention adoption or Convention adoption order on the ground that the adoption is contrary to public policy.
- (2) The court may, on an application under this subsection—
 - (a) by order provide for an overseas adoption or a determination under section 110 to cease to be valid on the ground that the adoption or determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case, or
 - (b) decide the extent, if any, to which a determination under section 110 has been affected by a subsequent determination under that section.
- (3) The court may, in any proceedings in that court, decide that an overseas adoption or a determination under section 110 is to be treated, for the purposes of those proceedings, as invalid on either of the grounds mentioned in subsection (2)(a).
- (4) Subject to the preceding provisions, the validity of a Convention adoption, Convention adoption order or overseas adoption or a

determination under section 110 cannot be called in question in proceedings in any court in the Island.

110 Section 108: supplementary

P2002/38/90

- (1) Any application for a direction under section 108 or a decision under subsection (2)(b) or (3) of that section must be made in the prescribed manner and within any prescribed period.
- (2) “Prescribed” means prescribed by rules.
- (3) No application may be made under section 108(1) in respect of an adoption unless immediately before the application is made—
 - (a) the person adopted, or
 - (b) the adopters or adopter,habitually reside in the Island.
- (4) In deciding in pursuance of section 108 whether such an authority as is mentioned in section 111 was competent to entertain a particular case, a court is bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to entertain the case.

111 Overseas determinations and orders

P2002/38/91

- (1) Subsection (2) applies where any authority of a Convention country or of the Channel Islands, or any British overseas territory has power under the law of that country or territory—
 - (a) to authorise, or review the authorisation of, an adoption order made in that country or territory, or
 - (b) to give or review a decision revoking or annulling such an order or a Convention adoption.
- (2) If the authority makes a determination in the exercise of that power, the determination is to have effect for the purpose of effecting, confirming or terminating the adoption in question or, as the case may be, confirming its termination.
- (3) Subsection (2) is subject to section 108 and to any subsequent determination having effect under that subsection.

PART 12 – MODIFICATIONS AND AMENDMENTS OF THE 2001 ACT

112 Introductory

This Part deals with modifications of, and amendments to, the 2001 Act which are consequential on this Act. It covers amendments relating to –

- (a) the acquisition of parental responsibility by step-parents;
- (b) the duration of residence orders;
- (c) a local authority’s duty to provide accommodation;
- (d) the duty to prepare care plans.

113 Modification of 2001 Act in relation to adoption

- (1) Where the Department is authorised to place a child for adoption, regulations may provide for the following provisions to apply with modifications, or not to apply, in relation to the child.
- (2) The provisions are—
 - (a) section 24 of the 2001 Act (the duty to ascertain wishes and feelings of certain persons);
 - (b) Schedule 2 to the 2001 Act (promoting contact with parents and parents’ obligations to contribute towards maintenance).
- (3) Where a registered adoption society is authorised to place a child for adoption, regulations may provide for section 23 of the 2001 Act to have effect in relation to the child whether or not the child is accommodated by or on behalf of the Department.
- (4) Where a child’s home is with persons who have given notice of intention to adopt, no contribution is payable (whether under a contribution order or otherwise) under Schedule 3 to the 2001 Act (contributions towards maintenance of children looked after by the Department) in respect of the period referred to in subsection (5).
- (5) That period begins when the notice of intention to adopt is given and ends if—
 - (a) the period of four months beginning with the giving of the notice expires without the prospective adopters applying for an adoption order, or
 - (b) an application for such an order is withdrawn or refused.

114 Acquisition of parental responsibility by step-parent

After section 4 of the 2001 Act there is inserted –

4A Acquisition of parental responsibility by step-parent

- (1) Where a child's parent ("parent A") who has parental responsibility for the child is married to a person who is not the child's parent ("the step-parent")—
 - (a) parent A or, if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child, or
 - (b) the court may, on the application of the step-parent, order that the step-parent shall have parental responsibility for the child.
- (2) An agreement under subsection (1)(a) is also a "parental responsibility agreement", and section 4(2) applies in relation to such agreements as it applies in relation to parental responsibility agreements under section 4.
- (3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application—
 - (a) of any person who has parental responsibility for the child, or
 - (b) with the leave of the court, of the child in respect of whom the step-parent has acquired parental responsibility.
- (4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application. **22**

115 Restrictions

After section 13(2) of the 2001 Act (leave to apply for s11 order), there is inserted—

- 33**(3) Where the person applying for leave to make an application for an order under section 11 is a person who was at any time in the preceding 6 months a foster parent of a child, the court shall not grant such leave unless it is satisfied that —
 - (a) that person has the consent of the Department to make the application,
 - (b) that person is a relative of the child, or
 - (c) the child has lived with that person for at least 12 months preceding the application. **22**

116 Residence orders: extension to age of 18

- (1) In section 16 of the 2001 Act (effect of residence order), after subsection (4) there is inserted —
- (4A) The power of a court to make a residence order in favour of any person who is not the parent or guardian of the child concerned includes power to direct, at the request of that person, that the order continue in force until the child reaches the age of eighteen (unless the order is brought to an end earlier); and any power to vary a residence order is exercisable accordingly.
- (4B) Where a residence order includes such a direction, an application to vary or discharge the order may only be made, if apart from this subsection the leave of the court is not required, with such leave.
- (2) In section 14 of that Act (restrictions on making section 11 orders), at the beginning of subsection (4) there is inserted “Subject to section 16(4A)”.
- (3) In section 15 of that Act (duration of orders), in subsection (3)(b), after “14(4)(b)” there is inserted “or 16(4A)”.

117 Provision of accommodation

After section 25(1)(b) of the 2001 Act (provision of accommodation), there is inserted —

- (ba) he is ordinarily resident outside the Island, provided that the local authority for the area in which the child is ordinarily resident must take over the provision of accommodation for the child within —
- (i) 28 days of being notified in writing that the child is being provided with accommodation; or
- (ii) such other longer period as may be prescribed in regulations made by the Department.

118 Approved foster carers

After section 26(3) of the 2001 Act (manner in which accommodation may be provided) there is inserted —

- (4) This subsection and subsections (5) and (6) apply where the Department is looking after a child (C) and —
- (a) are considering adoption for C, or
- (b) are satisfied that C ought to be placed for adoption but are not authorised under section 19 of the Adoption Act 20** (placement with parental consent) or by virtue of section 21 of that Act (placement orders) to place C for adoption.

- (5) Where this subsection applies –
- (a) subsection (3) does not apply to the Department,
 - (b) the Department must consider placing C with an individual within subsection (1)(a), and
 - (c) where the Department decide that a placement with such an individual is not the most appropriate placement for C, it must consider placing C with a foster parent who has been approved as a prospective adopter within the meaning of the Adoption Act 20**].
- (6) The Department may make regulations for, and in connection with, the purposes of this section. **22**

PART 13 - FINAL PROVISIONS

DIVISION 1: INTRODUCTORY

119 **Introductory**

This Part deals with additional sundry matters relating to adoption including –

- (a) restrictions on advertisements relating to adoptions;
- (b) penalties for breaching such restrictions;
- (c) Tynwald procedures for subordinate legislation;
- (d) rules of procedure.

DIVISION 2: MISCELLANEOUS

Advertisements in the Island

120 **Restriction on advertisements etc.**

P2002/38/123

- (1) A person must not –
 - (a) publish or distribute an advertisement or information to which this section applies, or
 - (b) cause such an advertisement or information to be published or distributed.
- (2) This section applies to an advertisement indicating that –
 - (a) the parent or guardian of a child wants the child to be adopted,
 - (b) a person wants to adopt a child,

- (c) a person other than an adoption agency is willing to take any step mentioned in paragraphs (a) to (e), (g) and (h) and (so far as relating to those paragraphs) (i) of section 69(2),
 - (d) a person (P) other than an adoption agency is willing to receive a child handed over to P with a view to the child's adoption by P or another, or
 - (e) a person is willing to remove a child from the Island or the British Islands for the purposes of adoption.
- (3) This section applies to—
- (a) information about how to do anything which, if done, would constitute an offence under section 69 or 105 (whether or not the information includes a warning that doing the thing in question may constitute an offence);
 - (b) information about a particular child as a child available for adoption.
- (4) For the purposes of this section and section 121—
- (a) publishing or distributing an advertisement or information means publishing it or distributing it to the public and includes doing so by electronic means (for example, by means of the internet);
 - (b) the public includes selected members of the public as well as the public generally or any section of the public.
- (5) Subsection (1) does not apply to publication or distribution by or on behalf of an adoption agency.
- (6) The Department may by order make any amendments to this section which it considers necessary or expedient in consequence of any developments in technology relating to publishing or distributing advertisements or other information by electronic or electro-magnetic means.
- (7) References to an adoption agency in this section include a prescribed person outside the Island exercising functions corresponding to those of an adoption agency, if the functions are being exercised in prescribed circumstances.
- (8) “Prescribed” means prescribed by regulations made by the Department.
- (9) In this section references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the Island.

121 Offence of breaching restriction under section 120

P2002/38/124

- (1) A person who contravenes section 120(1) commits an offence.

Maximum penalty - (summary) 3 months' custody, a fine of level 5 on the standard scale or both.

- (2) A person does not commit an offence under this section unless it is proved that person knew or had reason to suspect that section 120 applied to the advertisement or information.
- (3) But subsection (2) only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.
- (4) Proceedings for an offence under this section —
 - (a) may not be brought more than 6 years after the commission of the offence but, subject to that,
 - (b) may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.

Adoption and Children Act Register

122 Submission of information to the Adoption and Children Act Register

- (1) An adoption agency may submit prescribed information to the Secretary of State or the registration organisation for entry on the register.
- (2) But an adoption agency is not to disclose any information —
 - (a) about prospective adopters who are suitable to adopt a child, or persons who were included in the register as prospective adopters, without their consent;
 - (b) about children who are suitable for adoption, or for whom the Department are considering adoption or persons who were included in the register as such children, without the consent of the prescribed person.
- (3) Consent under subsection (2) is to be given in the prescribed form.
- (4) Information is to be given to the Secretary of State or the registration organisation in the prescribed form and manner.
- (5) An adoption agency must pay the Secretary of State or the registration organisation the prescribed fee (if any) in connection with the giving of information which is entered on the register.
- (6) The provisions of section 128A (search and inspection of the register by prospective adopters), 129 (disclosure of information) and 130 (supplementary) of the UK 2002 Act apply to any information submitted to the register by an adoption agency.

- (7) In this section —
- "prescribed" means prescribed in regulations made by the Department;
- "the register" means the Adoption and Children Act register which is maintained by the Secretary of State in accordance with sections 125 to 131 of the UK 2002 Act;
- "registration organisation" means any organisation appointed by the Secretary of State for the purposes of sections 126 or 127 of the UK 2002 Act;
- "the UK 2002 Act" means the Adoption and Children Act 2002.

Other miscellaneous provisions

123 Amendments, transitional and transitory provisions, savings and repeals

- (1) Schedule 2 (minor and consequential amendments) is to have effect.
- (2) Schedule 3 (transitional and transitory provisions and savings) is to have effect.

PART 3

FINAL PROVISIONS

124 Orders, rules and regulations

- (1) Tynwald procedure for subordinate legislation made under any provision of this Act other than that referred to in subsection (2) – negative.
- (2) Subordinate legislation —
 - (a) under section ***;
 - (b) under section ***;
 - (c) under section ***; or
 - (d) which adds to, replaces or omits any part of the text of an Act,is not to be made unless a draft of the legislation has been laid before, and approved by Tynwald.
- (3) Regulations made by the Department under this Act may —
 - (a) permit a person to exercise a discretion in respect of any matters specified in the regulations, and
 - (b) provide for their contravention to be an offence and prescribe a penalty for commission of the offence of a fine not exceeding level 5 on the standard scale on summary conviction.

125 Rules of procedure

P2002/38/141

- (1) Rules made by the Deemsters may make provision in respect of any matter to be prescribed by rules made by virtue of this Act and dealing generally with all matters of procedure.
- (2) In the case of an application for a placement order, for the variation or revocation of such an order, or for an adoption order, the rules must require any person mentioned in subsection (4) to be notified —
 - (a) of the date and place where the application will be heard, and
 - (b) of the fact that, unless the person wishes or the court requires, the person need not attend.
- (3) The persons referred to in subsection (2) are —
 - (a) in the case of a placement order, every person who can be found whose consent to the making of the order is required under subsection (3)(a) of section 21 (or would be required but for subsection (3)(b) of that section) or, if no such person can be found, any relative prescribed by rules who can be found;
 - (b) in the case of a variation or revocation of a placement order, every person who can be found whose consent to the making of the placement order was required under subsection (3)(a) of section 21 (or would have been required but for subsection (3)(b) of that section);
 - (c) in the case of an adoption order —
 - (i) every person who can be found whose consent to the making of the order is required under subsection (2)(a) of section 29 (or would be required but for subsection (2)(c) of that section) or, if no such person can be found, any relative prescribed by rules who can be found;
 - (ii) every person who has consented to the making of the order under section 20 (and has not withdrawn the consent) unless that person has given a notice under subsection (4)(a) of that section which has effect,
 - (iii) every person who, if leave were given under section 29(5), would be entitled to oppose the making of the order.
- (4) Rules may, for the purposes of the law relating to contempt of court, authorise the publication in such circumstances as may be specified of information relating to proceedings held in private involving children.

126 Supplementary and consequential provision

P2002/38/142

- (1) The Department may by regulations make —

- (a) any supplementary, incidental or consequential provision;
 - (b) any transitory, transitional or saving provision,
- which it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) Regulations may modify any provision of this Act or any enactment passed or made before or at the same time as this Act.

127 **General interpretation**

- (1) In this Act—

“**the 2001 Act**” means the Children and Young Persons Act 2001;

“**the 2013 Act**” means the Regulation of Care Act 2013;

“**appropriate adoption agency**”, in relation to an adopted person or to information relating to their adoption, means—

- (a) if the person was placed for adoption by an adoption agency, that agency or (if different) the agency which keeps the information in relation to their adoption;
- (b) in any other case, the Department to which notice of intention to adopt was given;

“**approved adoption society**” has the meaning given in section 58 of the 2013 Act;

“**care order**” means an order under Part 4 of the 2001 Act;

“**child**”, except where used to express a relationship, means a person who has not attained the age of 18 years;

“**consent**” means consent given unconditionally and with full understanding of what is involved;

“**the Convention**” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;

“**Convention adoption**” means an adoption effected under the law of a Convention country outside the British Islands, and certified in pursuance of Article 23(1) of the Convention;

“**Convention adoption order**” means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c. 18) (regulations giving effect to the Convention), is made as a Convention adoption order;

“**Convention country**” means a country or territory in which the Convention is in force;

“**court**” means the High Court;

“**the Department**” means the Department of Health and Social Care;

“**fee**” includes expenses;

“**guardian**” has the same meaning as in the 2001 Act and includes a special guardian within the meaning of that Act;

“**information**” means information recorded in any form;

“**notice**” means a notice in writing;

“**notice of intention to adopt**” means the notice referred to in section 26(2);

“**overseas adoption**” —

(a) means an adoption of a description specified in an order made by the Department, being a description of adoptions effected under the law of any country or territory outside the British Islands, but

(b) does not include a Convention adoption;

“**relative**”, in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by marriage or civil partnership;

“**rules**” means Family Procedure Rules,

“**subordinate legislation**” has the same meaning as in the Interpretation Act 2015.

(2) References to “adoption agency” mean, unless otherwise provided, the Department and an approved adoption society.

(3) References 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.

(4) References to “looked after by the Department” in respect of a child are (howsoever expressed) are to a child looked after by the Department in accordance with 2001 Act.

(5) Any power conferred by this Act to prescribe a fee by regulations includes power to prescribe —

(a) a fee not exceeding a prescribed amount;

(b) a fee calculated in accordance with the regulations;

(c) a fee determined by the person to whom it is payable, being a fee of a reasonable amount.

(6) In this Act, a couple means —

(a) a married couple, or

(b) 2 people who are civil partners of each other, or

(c) 2 people (whether of different sexes or the same sex) living as partners in an enduring family relationship.

- (7) Subsection (5)(c) does not include 2 people one of whom is the other's parent, grandparent, sister, brother, aunt or uncle.
- (8) References to relationships in subsection (5) —
 - (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for adoption, and
 - (b) include the relationship of a child with the child's adoptive, or former adoptive, parents, but do not include any other adoptive relationships.
- (9) For the purposes of this Act, a person is the partner of a child's parent if the person and the parent are a couple but the person is not the child's parent.

128 Repeals

- (1) The Adoption Act 1984 is repealed.
- (2) Notwithstanding the repeal of the Adoption Act 1984, the following instruments shall continue in operation as if made under the corresponding provision in this enactment

SCHEDULE 1**DISCLOSURE OF BIRTH RECORDS BY CHIEF REGISTRAR**

[Section 98]

1 Information on application

- (1) On an application made in the prescribed manner and payment of the prescribed fee by an adopted person (the applicant)—
 - (a) a record of whose birth is kept by the Chief Registrar, and
 - (b) who has attained the age of 18 years,

the Chief Registrar must give the applicant any information necessary to enable the applicant to obtain a certified copy of the record of the applicant's birth.

- (2) "Prescribed" means prescribed by regulations made by the Chief Registrar with the approval of the Department.

2 Counselling services

- (1) Before supplying any information to an applicant under paragraph (1) the Chief Registrar must inform the applicant that counselling services are available to the applicant —
 - (a) from the Department, or
 - (b) if the applicant's adoption was arranged by an approved adoption society, from that society.
- (2) If the applicant chooses to receive counselling from the Department or an adoption society, the Chief Registrar must send to the Department or to the adoption society of the applicant's choice the information to which the applicant is entitled under paragraph (1).
- (3) The Chief Registrar must not supply an applicant (A) who was adopted before the commencement of this section with any information under paragraph (1) unless —
 - (a) A has attended an interview with a counsellor in pursuance of arrangements made by the Department or the adoption society from whom A is entitled to receive counselling in accordance with paragraph (4), or
 - (b) A has satisfied a registrar that P is already aware of the identity of A's birth parents.
- (4) If the applicant chooses to receive counselling from a person or body within sub-paragraph (1), the Chief Registrar must send to

the person or body the information to which the applicant is entitled under paragraph 1.

- (5) Where an adopted person who is in England and Wales—
 - (a) applies for information under paragraph 1 or Article 54 of the Adoption (Northern Ireland) Order 1987, or
 - (b) is supplied with information under section 55(4)(b) of the Adoption and Children (Scotland) Act 2007 (asp 4),

the persons and bodies mentioned in sub-paragraph (4) must, if asked by the applicant to do so, provide counselling for the applicant.

- (6) Those persons and bodies are—
 - (a) the Chief Registrar,
 - (b) the Department,
 - (c) any local authority,
 - (d) a registered adoption society, a Scottish adoption agency or an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987.

- (7) Where an applicant—
 - (a) was adopted before 12 November 1975, and
 - (b) applies for information under paragraph 1,

the Chief Registrar must not give the information to the applicant unless the applicant has attended an interview with a counsellor arranged by a person or body from whom counselling services are available as mentioned in sub-paragraph (2).

- (8) Where the Chief Registrar is prevented by sub-paragraph (1) from giving information to a person who is not living in the United Kingdom, the Chief Registrar may give the information to any body which—
 - (a) the Chief Registrar is satisfied is suitable to provide counselling to that person, and
 - (b) has notified the Chief Registrar that it is prepared to provide such counselling.

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS

[Section 123]

1 The Legitimacy Act 1985

- (1) The *Legitimacy Act 1985* is amended as follows.
- (2) In section 4 (legitimation of adopted child)—
 - (a) in subsection (1), after “1984” there is inserted **66** or section 88 of the *Adoption Act 20** 22*;
 - (b) in subsection (2)—
 - (i) in paragraph (a), after “29(2)” there is inserted **66** or subsection (3)(b) of the said section 88 **22**,
 - (ii) in paragraph (b), after “Act” there is inserted **66** or section 88, 89 or 90 of the *Adoption Act 20** 22*.
- (3) In section 5 (dispositions depending on date of birth), at the end of subsection (7) there is inserted **66** or section 69(2) of the *Adoption Act 20** 22*.
- (4) In section 32 (effect of an order), in subsection (5)(b)(i) for “section 43 of the *Adoption Act 1984*” there is substituted **66** section 106 of the *Adoption Act 20** 22*.
- (5) In section 38 (duration of care orders), in subsection (2)(b)(iii) for “section 43 of the *Adoption Act 1984*” there is substituted “section 106 of the *Adoption Act 20***”.
- (6) In section 57 (private fostering), in subsection (6)(c) for “*Adoption Act 1984*” there is substituted **66** *Adoption Act 20** 22*.
- (7) In section 89 (parental orders in favour of donors), in subsection (8)(a) and (b) for “*Adoption Act 1984*” there is substituted **66** *Adoption Act 20** 22*.
- (8) In section 102 (interpretation - general), in subsection (1) in the definition of “family proceedings” for paragraph (b)(ii) there is substituted —

66 (ii) the <i>Adoption Act 20**</i> ; 22

- (9) In Schedule 2 (children looked after by the Department), in paragraph 6(6) for “Section 45 of the *Adoption Act 1984*” there is substituted **66** Section 109 of the *Adoption Act 20** 22*.

2 The Child Custody Act 1987

- (1) Section 50 of the *Child Custody Act 1987* (abduction of child by parent etc.) is amended as follows.

- (2) In subsection (2), after paragraph (c) there is inserted—
- (ca)** he is a special guardian of the child; or **(2)**.
- (3) In subsection (3)(a), after “guardian of the child” there is inserted **(ca)** any special guardian of the child, **(2)**.
- (4) In subsection (4), for paragraphs (a) and (b) there is substituted—
- (a)** he is a person in whose favour there is a residence order in force with respect to the child, and he takes or sends the child out of the United Kingdom for a period of less than one month; or
- (b)** he is a special guardian of the child and he takes or sends the child out of the United Kingdom for a period of less than three months. **(2)**
- (5) After subsection (7) there is inserted—
- (8)** In this section and section 51 “special guardian” has the meaning in the *Children and Young Persons Act 2001*. **(2)**.
- (6) In section 51 (abduction of child by other persons), in subsection (2), after paragraph (c) there is inserted—
- (ca)** he is a special guardian of the child; or **(2)**.

3 The Mental Health Act 1998

In section 39 of the Mental Health Act 1998 (nearest relative of minor under guardianship, etc.), in subsection (3), in the definition of “guardian” after “Channel Islands” there is inserted **(ca)** includes a special guardian (within the meaning of the Children and Young Persons Act 2001) **(2)**.

4 The Matrimonial Proceedings Act 2003

- (1) The Matrimonial Proceedings Act 2003 is amended as follows.
- (2) In section 115 (meaning of “cohabitants”, “relevant child” and “associated persons”) —
- (a)** in subsection (2)(b) for “*Adoption Act 1984*” there is substituted **(ca)** *Adoption Act 20*** **(2)**;
- (b)** in subsection (6) for “section 5(2A) of the *Adoption Act 1984*” there is substituted **(ca)** section 28 of the *Adoption Act 20*** **(2)**.
- (3) In section 116 (interpretation of Part 5) in subsection (1) —
- (a)** for the definition of “adoption order” there is substituted —
- (ca)** “**adoption order**” means an order under section 28 of the *Adoption Act 20***; **(2)**

- (b) in the definition of “family proceedings” for paragraph (b)(iii) there is substituted –

▮ (iii) the *Adoption Act 20***; ▮.

5 The Gender Recognition Act 2009

In the *Gender Recognition Act 2009*, in Schedule 1 (gender recognition – registration practice), in paragraph 10 (evidence), in subparagraph (2)(a) for “section 38(1) of the *Adoption Act 1984*” there is substituted ▮ section 77 of the *Adoption Act 20*** ▮.

6 The Regulation of Care Act 2013

- (1) The *Regulation of Care Act 2013* is amended as follows.
- (2) In section 7 (agencies that are a care service), in subsection (1) for paragraph (g) there is substituted –
- ▮ (g) an approved adoption agency; ▮.
- (3) In section 7 (“child-related” care service), for paragraph (g) there is substituted –
- ▮ (g) an approved adoption agency. ▮
- (4) For section 32 (“voluntary adoption agency”) there is substituted –

▮ 32 Approved adoption society agency

A voluntary approved adoption society ~~agency~~ is a body –

- (a) that, under the *Adoption Act 20*** (the “adoption Act”) is an approved adoption society; and
- (b) whose activities are not carried on for profit. ▮
- (5) In section 56 (who can apply for registration), in subsection (2)(g) for “voluntary adoption agency” there is substituted ▮ approved adoption society ~~agency~~ ▮.
- (6) In section 164 (definitions for Division), in the definition of “newly regulated care service”, in paragraph (a) for “voluntary adoption agency” there is substituted ▮ approved adoption society ▮.

SCHEDULE 3

TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

[Section 123]

1 General rules for continuity

- (1) Any reference (express or implied) in Parts 1 to 11 or any other enactment, instrument or document to—
 - (a) any provision of Parts 1 to 11; or
 - (b) things done or falling to be done under or for the purposes of any provision of those Parts,

must, so far as the nature of the reference permits, be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision repealed by this Act had effect, a reference to that corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision.

- (2) Any reference (express or implied) in any enactment, instrument or document to—
 - (a) a provision repealed by this Act, or
 - (b) things done or falling to be done under or for the purposes of such a provision,

must, so far as the nature of the reference permits, be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision of Parts 1 to 11 has effect, a reference to that corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision.

2 Adoption support services

- (1) The facilities to be provided by the Department as part of the service maintained under section 14 of the *Adoption Act 1984* include such arrangements as the Department may be required by regulations to make for the provision of adoption support services to prescribed persons.
- (2) Regulations under sub-paragraph (1) may require the Department—
 - (a) at the request of a prescribed person (“P”), to carry out an assessment of P’s needs for adoption support services;
 - (b) if, as a result of the assessment, the Department decide that P has such needs, to decide whether to provide any such services to P;

- (c) if the Department decide to provide any such services to P, and the circumstances fall within a description prescribed by the regulations, to prepare a plan in accordance with which the services are to be provided to P and keep the plan under review.
- (3) Subsections (6) and (7) (except paragraph (a)) of section 13 of this Act apply to regulations under sub-paragraph (1) as they apply to regulations made by virtue of that section.
- (4) Section 45(1) of the *Adoption Act 1984* (prohibited payments) does not apply to any payment made in accordance with regulations under sub-paragraph (1).

3 Pending applications for adoption orders

Nothing in this Act affects any application for an adoption order under section 1 of the *Adoption Act 1984* where—

- (a) the application has been made and has not been disposed of immediately before the repeal of that section, and
- (b) the child in relation to whom the application is made has their home immediately before that repeal with a person with whom they has been placed for adoption by an adoption agency.

4 Notification of adoption applications

Where a notice given in respect of a child by the prospective adopters under section 7(1) of the *Adoption Act 1984* is treated by virtue of paragraph 1(1) as having been given for the purposes of section 26(2) in respect of an application to adopt the child, section 27(3) has effect in relation to their application for an adoption order as if for “3 months” there were substituted **6** X months **2**.

5 Adoptions with a foreign element

In section 2 of the *Adoption Act 1984* (child to live with adopters before order is made)—

- (a) in subsection (1)(a), at the beginning there is inserted **6**(subject to subsection (1A)) **2**;
- (b) after subsection (1) there is inserted—
 - 6**(1A)Where an adoption is proposed to be effected by a Convention adoption order, the order shall not be made unless at all times during the preceding 6 months the child had his home with the applicants or one of them. **2**;
- (c) in subsection (2), after “subsection (1)” there is inserted **6** or (1A) **2**;
- (d) subsection (3) is omitted.

6 Restrictions on removal

In section 44 of the *Adoption Act 1984* (restriction on removal of children for adoption outside Great Britain)—

- (a) in subsection (1), “not being a parent or guardian or relative of the child” is omitted;
- (b) at the end of that section there is inserted—

▮(4) Regulations may provide for subsection (1) to apply with modifications, or not to apply, if—

- (a) the prospective adopters are parents, relatives or guardians of the child in question (or one of them is), or
- (b) the prospective adopter is a step-parent of the child, and any prescribed conditions are met.

Tynwald procedure – approval required.

▮(5) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Department. ▮

7 Advertising

In section 46 of the *Adoption Act 1984* (restrictions on advertisements)—

- (a) after subsection (1) there is inserted—

▮(1A) Publishing an advertisement includes doing so by electronic means (for example, by means of the internet). ▮;

- (b) for subsection (2) there is substituted—

▮(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section commits an offence.

Maximum penalty (summary) - imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both. ▮

8 Status

- (1) Section 84—

- (a) does not apply to a pre-1984 instrument or enactment in so far as it contains a disposition of property, and
- (b) does not apply to any Act of Tynwald in its application to any disposition of property in a pre-1984 instrument or enactment.

- (2) Section 90 applies in relation to this paragraph as if this paragraph were contained in Part 9; and an instrument or enactment is a pre-1984 instrument or enactment for the purposes of this Schedule if it was passed or made at any time before 1st January 1986.

9 Pre-1984 instruments

Section 86 does not apply to a pre-1984 instrument.

10 Legitimacy Act 1985

In section 91(1), the reference to Part 3 of the *Administration of Estates Act 1990* includes Part 2 of the *Legitimacy Act 1985*.

