

# Adoption: what does it mean for birth parents?

## Introduction

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This advice sheet is written for parents whose child may be adopted. This might be because you (the parents) have agreed that this is the best thing for your child, or because your child has been removed from your care, and Children’s Services think that adoption is the best thing for your child’s long-term future.

Whatever the circumstances, any plan for your child to be adopted is likely to be an extremely difficult time for you. However, it is important that you understand what decisions can be made, when and by whom. This advice sheet aims to help you to understand what adoption means for you and your child. It will also guide you through the different stages of the adoption process.

It is quite long, because there is a lot of relevant information in it, so we have divided it into sections to make it easier to read:

- ✓ [Part 1](#) - gives **basic information about adoption**; (page 5)
- ✓ [Part 2](#) – explains **the steps Children’s Services must take before they can place** your child for adoption (page 10);
- ✓ [Part 3](#) – gives information about **placement for adoption** (page 16);
- ✓ [Part 4](#): gives information about **how an adoption order is made** (page 23);
- ✓ [Part 5](#): gives information about **adoption support** services (page 28); and
- ✓ [Part 6](#) – says **where you can get more information** (page 29).

Adoption is a complicated process so you may want to ask a friend or your solicitor to go through this advice sheet with you and explain anything you don't understand. You can also call Family Rights Group (FRG) advice line for further information and advice - you can find FRG contact details in part 6 of this advice sheet.

We have included the references for all the legal and practice requirements in endnotes which you can find at the end of the advice sheet. For full details of all the documents referred to in the endnotes, see the references section, also at the end of the advice sheet.

There is a separate advice sheet on open adoption, which outlines the steps parents and other birth relatives can take to try to maintain contact/links with their child after they are adopted – see FRG Advice Sheet on [Open Adoption](http://www.frg.org.uk/need-help-or-advice/our-advice-service)  
<http://www.frg.org.uk/need-help-or-advice/our-advice-service>

**Note: “Social services” are now known as “Children’s Services”. This is how they are referred to throughout this advice sheet.**

Key terms used in this advice sheet include:

**Accommodation:** this is when your child is looked after in the care system with your agreement or the agreement of your child's other parent, anyone else who has parental responsibility or your child themselves if they are aged 16 or 17. This is also known as s.20 accommodation<sup>1</sup>.

**Adoption:** this is a court order which makes a child legally part of the family that adopts them and ends their legal relationship with their birth family forever.

**Adoption Agency:** The adoption agency is responsible for arranging your child's adoption and placing them for adoption. There are two types of adoption agency:

- i) it may be part of the Children's Services department which is already involved in making plans for your child's care or

- ii) it may be an independent adoption agency which your social worker has asked to help with plans for your child's adoption.

Whichever type of adoption agency it is, the Children's Services department involved with your child is still responsible for making sure that the correct law and procedure is followed.

**Agency decision maker:** The agency's decision maker (ADM) is a senior person within the adoption agency. This person has the authority to make decisions on the agency's behalf about whether:

- a child should be placed for adoption;
- prospective adopters are suitable to adopt a child;
- a child should be placed for adoption with particular prospective adopters;

There may be more than one decision-maker in an agency.

**Foster for adoption placement:** This is when a **looked after** child lives with foster carers who may go on to adopt them, even though adoption is not yet the formal plan for the child and the court has not agreed to this. It is used mostly for babies and very young children but it can only happen if the parents agree or there is a care order or an emergency protection order on the child. **BUT** the child cannot go on to be adopted without either the parents (who have parental responsibility) formally **consenting to adoption** or the court making a **placement/adoption order** (see below on page 5).

**Note:** If fostering for adoption is suggested for your child, it is **essential that you take legal advice** from a solicitor specialising in children law and/or FRG advice line immediately – contact details on in part 6 of this advice sheet.

**In care:** A child is in care when they are being looked after in the care system under a care or emergency protection order. For further information see FRG advice sheet on Care (and related) proceedings <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

**Looked after:** Your child is "*looked after*" if they are being cared for by Children's Services in the care system, either:

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✓ with your agreement, or with the agreement of your child's other parent or anyone else with parental responsibility, or with the agreement of the young person if they are aged 16 or 17; or

✓ under a court order such as a care order or emergency protection order,

For more information about what Children's Services must do when a child is *looked after* see FRG advice sheet on Duties of Children's Services when children are in the care system. <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

**Parent:** In the **adoption process**, the word 'parent' means *parents who have parental responsibility only*.<sup>2</sup> This includes all mothers, and fathers who have got parental responsibility by:

- being married to the mother at any time since the child's birth; or
- being registered as the father of the child on their birth certificate after 1<sup>st</sup> December 2003. Re-registration is possible if the mother agrees;
- signing a formal parental responsibility agreement with the mother; or
- getting parental responsibility by an order of the court.

However, in **fostering for adoption**, the term 'parent' means both mother and father, whether or not the father has parental responsibility. *A father who does not have parental responsibility, whose child may be adopted, should get legal advice immediately*

**Parental responsibility** means the legal right to make decisions about how a child is raised. For more information about parental responsibility, see FRG advice sheet Parental Responsibility: <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

**Placement order:** When the court decides that your child cannot return home and adoption is the best long term option for them, the court is likely to make an order that your child may be placed with prospective adopters. This is different to fostering for adoption (see page 3 above).

If fostering for adoption or a plan or placement for adoption has been suggested for your child, it is important that you take legal advice straightaway either from a solicitor specialising in children law or Family Rights Group advice service – contact details for both in part 6.

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## PART 1: BASIC INFORMATION ABOUT ADOPTION

### What is fostering for adoption?

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Fostering for adoption is when a *looked after* child lives with foster carers who may go on to adopt them, even though adoption is not yet the formal plan for the child and the court has not agreed to this. It was introduced by a recent change in the law which says that when:

- a child is looked after in the care system (with the agreement of the parents/others with parental responsibility or under a care order or emergency protection order); AND
- there are no suitable options for the child to be raised in their family network; AND
- Children's Services are considering adoption as a possible long term plan for the child,

the social worker has to consider placing them with foster carers who are also approved as prospective adopters. These carers *could* go on to adopt the child, if the court decides at a later date that they cannot return to the care of their parents or wider family and adoption order is best for them. **BUT**, the child cannot go on to be adopted without either the parents formally consenting to a **placement for adoption** or the court making a **placement order** (see 16 below).

Fostering for adoption is used mostly for babies and very young children but ***it can only happen if the parents agree or Children's Services have a care order or an emergency protection order.***

***If fostering for adoption has been suggested for your child, it is essential that you take legal advice immediately either from a solicitor specialising in children law and/or FRG advice line— contact details in part 6 of this advice sheet.***

### What is adoption?

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Adoption is a court order which makes a child part of a new family. The adopters become their new parents and the adoptive family become the child's new family legally. Adoption also permanently ends the legal relationship between the child and their birth family. Once an adoption order is made, it is permanent and can never be ended.

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## **What does adoption mean for my child?**

If the court makes an adoption order on your child, they will become part of the new adoptive family and they will no longer be legally related to you or anyone else in your family. This means that, in law, you will no longer be your child's parent and they will no longer be your child.

## **As the child's father, will I be asked for my views?**

Yes, normally you will be, if they know who you are. It is very important for your child that all possible options for them to live within their family network have been explored **before** Children's Services consider adoption for them.<sup>3</sup> So even if you don't have parental responsibility (see page 4), then, unless the court has said they don't have to, they must ask you:

- for your views about the adoption plan (for more information see page 13); and
- whether you and/or any members of your family may be able to look after your child long term instead of them being adopted. But this can only happen if they (and potentially the court) think this will be in your child's best interests.

However, you will not necessarily be directly involved in any court case about your child being adopted unless you have parental responsibility. This is because the term 'parent' in adoption cases only includes parents who have parental responsibility – see page 4 for the circumstances in which fathers can get parental responsibility.

***If you are a father of a child who may be adopted and you do not have parental responsibility for your child, it is essential that you contact a solicitor straight away – to find a solicitor see part 6 of this advice sheet.***

If you are the mother of a child who may be adopted and ***you want your child's father to be involved in the adoption process, it is important that you give the adoption agency his name and contact details if he isn't living with you.*** The agency will then get in touch with him and ask him for his views, inform him of his rights and offer him counselling and support.

## **As the child's mother, do I have to involve the child's father?**

Yes, generally you do. Children's services must ask him for his views about the adoption plan and whether he or anyone in his family can look after your child instead of them being adopted. ***If you would prefer your child's father not to be involved***, you can explain your reasons to the social worker but they will almost certainly want to contact him, unless the circumstances are very exceptional and the court has said they don't have to.<sup>4</sup>

## **What should I do if I want my child to be raised by someone in my family or by friends, rather than being adopted?**

How realistic this is will depend on how far the adoption plan has progressed. However, if you want your child to be cared for by other members of your family or by friends rather than them being adopted, it is really important that you tell ***the social worker and your solicitor (if you have one) as soon as soon as possible and that they also contact the social worker directly***, since this is the very last chance for anyone in your family to be considered as a potential carer for your child.

It is also essential that ***any family member who may/wants to care for your child gets independent legal advice*** about any legal steps they could take to be able to care for your child - they can either call Family Rights Group advice line or contact a solicitor specialising in children law - contact details in part 6 of this advice sheet.

If you think there may be someone in your family who could look after your child, you could also ask the social worker to refer you for a ***Family Group Conference*** (FGC). This would enable everyone in your family to consider safe options for your child.

## **What is a Family Group Conference?**

A Family Group Conference (FGC) is a decision-making process in which the whole family makes plans and decisions for a child who, because of difficulties in the family, needs a plan that will keep them safe and well-cared for. It offers family members a chance to get together, and take the lead in finding solutions to their problems and making plans for the child, but the plans must always take account of any concerns

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or 'bottom line' identified by the social worker. The professionals will only agree with the family's plan if the child will be safe and well cared for. Professionals are only involved in *part* of the meeting.

FGCs are now available in many areas and where they are not, it is always possible for the social worker to 'spot purchase' an FGC. For further information about this see FRG advice sheet on Family Group Conferences. <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

## **How should I respond when the social worker talks about a plan for my child to be adopted?**

It can be very distressing to hear that Children's Services are planning to place your child for adoption. You may be so angry and upset that you want to avoid them altogether. However, it is very important you stay involved at this stage as there are a number of things you still need to discuss with them, for example,

- there may be people in your family who could care for your child on a long term basis. If so, you need to ask the social worker to assess them immediately. You should also encourage them to get legal advice from a solicitor or FRG's advice line immediately;
- you may want the social worker to refer you for an FGC to find a suitable family carer – see above;
- you may want to make alternative proposals for your child, such as a special guardianship order in favour of their current foster carers;
- you may want to make sure the adoption agency has all the correct information about you and your family so that:
  - any decisions about your child are made on the basis of accurate information (e.g. about health issues); and
  - the information which is shared with the prospective adopters is as detailed as possible;
- you may want to help put information together for your child, e.g. by contributing to his or her 'life story' book;
- you may want to tell the Agency Decision Maker (and if there is no placement order, the Adoption Panel) your views. If so, ask your social worker if they can

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help you to write down what you think or help you to put your wishes and feelings on tape. The social worker should also give you a copy of their report to the Agency decision maker/Adoption Panel (or most of it) which should include your wishes and feelings. This is called 'the child's permanence report. For more information about this see page13;

- you may be able to influence the choice of adopters by saying the kind of person you would like your child to live with. You could also ask the social worker if you can meet the prospective adopters; and/or
- you may be able to ask for adopters who agree to you keeping in touch with your child, even if only through an exchange of letters cards and photos. However, this could only happen if the social worker is sure that this is in your child's best interest, that you won't undermine the placement and that the adopters agree.

### **Can I still see my child after they are adopted?**

It may be possible for you to receive some information about how your child's progress after the adoption order is made, but only if the adoption agency and/or the court think this is in your child's best interests. Sometimes, it may be possible for you send them cards/letters. It is very unusual (but not impossible) for you to be allowed to see your child after they are adopted.. For more information see FRG advice sheet on Open Adoption <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

### **Will I get any support to help me through the adoption process?**

It can be a very painful to come to terms with the idea that your child is, or may be, adopted, and you may well want to have some support. Therefore, as part of the adoption process, the adoption agency must provide you with a key worker and counselling - for more information, see page 12 and part 5 of this advice sheet.

## **PART 2: WHAT MUST HAPPEN BEFORE MY CHILD CAN BE PLACED WITH A FAMILY WHO WANTS TO ADOPT THEM?**

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The plan for your child to be adopted may be something which you have asked a social worker to arrange for you, or it may be a plan which they have put forward because they have concerns about how you look after your child.

Whatever the circumstances, there are strict legal processes which must be followed by Children's Services, the court and the adoption agency before your child can be formally *placed with a family who wants to adopt them*. However the process is different if Children's Services wants to place a child in a *foster for adoption placement* (see next question).

### **When might Children's Services consider placing my child in a foster for adoption placement?**

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Foster for adoption is also explained on page 3 and page 5 of this advice sheet.

The law says that Children's Services must consider placing a child who is looked after in the care system (whether in accommodation or in care) in a foster for adoption placement if they are considering adoption as the plan for that child. It can only go ahead if:

- there are no suitable options for the child to be raised in the family network; AND
- a nominated officer in the local authority has decided that this is the most appropriate placement for the child and that it will safeguard and promote their welfare; AND
- the parents have been notified; AND
- the local authority has the necessary authority or permission to make the placement i.e.:
  - o The child is in care (under an emergency protection order, an interim care order or a care order) which means the local authority can agree the care plan even if the parents object; or
  - o The child is accommodated and the parents/other person with parental responsibility agree the care plan<sup>5</sup>.

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The guidance says that *'if the birth parents do not agree to a foster for adoption placement, the local authority should review the care plan...[and]...should consider commencing care proceedings where the case meets the threshold for obtaining a care order and adoption remains the plan. Throughout the process, the local authority should continue to work with the wider family and friends to see if they are able and willing to care for the child.'*<sup>6</sup>

If a child is placed with foster for adoption carers, these people could go on to adopt the child, if the court decides at a later date that they cannot return to the care of their parents or wider family and adoption order is best for them .

Fostering for adoption is used mostly for babies and very young children but ***it can only happen if the parents agree or Children's Services have a care order or an emergency protection order.***

#### **Important note!**

***If Children's Services have mentioned to you that there is a plan for your child to be adopted or they are suggesting that your child is placed with foster carers who may go on to adopt, it is very important that you seek legal advice immediately before agreeing to the plan.*** To contact a solicitor or FRG's advice line, see part 6 of this advice sheet.

## **What must Children's Services do before they can go ahead with a plan for my child to be adopted?**

Whether or not your child has been placed with foster for adoption carers, Children's Services have to make a permanence plan for any looked after child once they have been in care for about 4 months (at the second statutory review).

If they are considering a plan for your child to be adopted, Children's Services must always think about ***what would be in your child's best interests throughout their life*** before they make any decision about adoption.

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Also, there are a number of steps they must follow before they can go ahead and place your child for adoption.

**Step 1: They must still consider any options for your child to live within your extended family:**

If there is anyone in your family who might be a suitable carer but has not yet been assessed by the social worker, you need to tell the social worker immediately and ask for them to be assessed. Also tell your solicitor straight away (see page 8-9 above).

Once Children's Services have decided there is no-one in your child's family (on either side) who can look after them safely and in a way that will be in their best interests, they may now be considering placing your child for adoption.

**Step 2. They must provide you and others in your family with information, counselling and support:**

The social worker must provide you and your child's other parent with

- a key worker as soon as there is a plan for your child to be adopted;<sup>7</sup> and
- counselling and information about fostering for adoption, the adoption process and the implications of adoption for you and your child.

They must also provide this counselling and information to your child who is being adopted and their siblings<sup>8</sup> (where appropriate).

So if there is a plan for your child to be adopted, you can ask the social worker for support for yourself and your other children.

However, if you feel uncomfortable about receiving counselling from the same agency that is arranging your child's adoption, there are other organisations, which are independent of Children's Services and the adoption agency, which support birth parents through adoption. You can either ask your social worker or key worker to refer you to them or you may be able to approach these organisations directly yourself. For more information about these organisations, see part 6 of this advice sheet.

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Parents also have a right to have their need for adoption support services assessed, for example, to support any contact arrangements (see part 5 below).<sup>9</sup>

### **Step 3: They must find out your wishes and feelings about adoption plan:**

The social worker must also speak you (the parents) to find out your wishes and feelings about:<sup>10</sup>

- the possibility of your child being placed for adoption,
- your child's religion and culture and
- any possible plans for contact between your child and you and/or other members of the family, both during the adoption process and after adoption.

If your child is old enough, the social worker must also speak to them about their wishes and feelings about the adoption.

If you are the ***child's father and you don't have parental responsibility***, the social worker must still:

- ask you for your views and those of your ***wider family***;
- ask you if you want to apply to court for a parental responsibility order and/or a child arrangements order for your child to live with you or keep in touch with you. ***If you wish to do this you must get legal advice urgently.*** To find a solicitor, see part 6 of this advice sheet;
- talk to any other person they consider relevant (for example other family members) about your child being placed for adoption and contact arrangements after that.<sup>11</sup>.

***Once the social worker has gathered this information, they must put it into a report (called the child's permanence report). This report will be relied upon when they make any decision about the adoption of your child, including when they find suitable prospective adopters for your child.***

The social worker must provide this report to the Agency Decision Maker (or the adoption panel if you are agreeing to the adoption) who then makes the final recommendation about whether adoption is the right plan for your child.<sup>12</sup>

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#### **Step 4: The social worker must present your child's case to the Agency Decision Maker (ADM) or to the Adoption Panel**

- (a) **If your child is the subject of care proceedings, or they are accommodated and you (and the other parent) do not agree to adoption,** the Agency Decision Maker (ADM) who is a senior person within the local authority, will make a decision about whether adoption is the right plan for your child. They will base their decision on:
- the information in the social worker's report about your child. This any information provided about your, and your child's, health and any other relevant information;
  - if court proceedings are taking place, a report setting out the guardian's views about the plans for your child;
  - any expert reports (or a summary of them) which have been prepared for the court proceedings;<sup>13</sup> and
  - your child's welfare<sup>14</sup>

The ADM must make their decision within 7 working days of receiving all this information. Good practice guidance<sup>15</sup> also says that the ADM should

- list all the material that they have taken into account in reaching their decision about any plan for your child to be adopted;
- include records of any discussions that they have with the agency or medical advisers about the plan;
- identify the main arguments in favour of adoption and those against; and
- set out their reasons for making the decision.

If the ADM fails to show that they have read and fully considered all the relevant information and arguments, it might be possible for you to challenge their decision at the time the court is considering whether to make a placement order (see further below at pages 18-20).

Once the ADM has made their decision, they must let you know what their decision is within two working days (in person or on the telephone) and they must send you written confirmation of their decision within five working days.

- (b) **If you (and the other parent) have *agreed to your child being adopted***, and there are no care proceedings, the Adoption panel will make a recommendation about whether your child should be adopted. Again, this will be based on the Panel's consideration of the social workers report (permanence report). The Panel will make recommendations about:
- whether your child should be placed for adoption (with your agreement) ;<sup>16</sup>
  - whether the proposed adopters are suitable to be approved as prospective adopters;<sup>17</sup> and
  - whether your child's needs are matched by the care offered by the proposed adopters.<sup>18</sup> ***It is therefore essential that you tell your child's social worker what you want for your child*** and whether you think it would be good for them to keep in touch with you or other members of your family, for example, through annual photos or birthday cards being exchanged. You could also put your *views in writing or on tape* for the social worker to give to the Panel.

If the Adoption Panel recommends that your child should be placed for adoption, it may also give advice to the adoption agency on whether your child should keep in touch with anyone in your family.

But it is the adoption agency (on behalf of Children's services) not the Adoption Panel that makes the final decision about whether the plan for your child should be adoption, taking account of any of the Panel's recommendations.<sup>19</sup>

**Important note:**

In either case, if it is decided that adoption is the right plan for your child, your child still cannot be formally placed for adoption unless you (the parents) have agreed or the court has made a placement order. You should seek legal advice about this from a solicitor or Family Rights Group advice line immediately – contact details in part 6 of this advice sheet.

## PART 3: PLACEMENT FOR ADOPTION

### What does it mean to 'place' a child for adoption?

When a child is placed for adoption, this means that the adoption agency formally arranges for your child to live with people who are approved as prospective adopters and who the agency thinks can meet your child's needs, this is called 'placing a child for adoption'. This can only happen if you (and your child's other parent if they have parental responsibility) have given your formal agreement to this plan or the court has made a placement order. These prospective adopters may go on to adopt your child if the court decides this is best for your child and there are no other options.

This is different to foster for adoption where the adoption plan has not been formally approved by the court or the local authority (see pages 3 & 5)

### When can my child be placed for adoption?

If Children's Services want to place your child for adoption, they can only do so if either:

- i) the parent(s) who have parental responsibility give their formal agreement to the placement;<sup>20</sup> **or**
- ii) the court has made a placement order<sup>21</sup>

Also, Children Services must have matched your child with suitable adopters who can meet your child's needs.

This means that even if the adoption agency has made a plan for your child to be placed for adoption, they cannot act on that plan unless **either**:

- you have given your formal agreement to the plan in writing and this has been witnessed by an officer of the court (from Cafcass)<sup>22</sup>; **or**
- they have been granted a placement order by the court.

If you are a **parent with parental responsibility** for your child, you would automatically be involved in these court proceedings. However, if you are a **father who does not yet have parental responsibility** you may not be, so **it is really**

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***important that you take legal advice immediately about obtaining parental responsibility*** so that you are then involved in this process.

***Important note:***

It is essential that you (the ***parents***) ***get legal advice and involve your wider family in considering the options for your child before you agree to your child being placed for adoption or being involved in placement order proceedings*** so you understand what it means. It can be very difficult to reverse the situation later on.

## **As a parent, how do I give my formal agreement to my child being placed for adoption?**

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If you agree that your child can be placed for adoption by Children's Services, your agreement will only be valid if it is ***in writing and has been witnessed by an officer of the court (from Cafcass)***.<sup>23</sup> However, you will only be asked for your formal agreement if you are a parent who has parental responsibility for your child (see page 4 for which fathers have parental responsibility).<sup>24</sup>

- **If you are a father without parental responsibility for his child:**

***If your child's mother gives her formal agreement to your child being placed for adoption, you will be treated as if you have agreed as well.***<sup>25</sup> This will be very difficult for you to undo at a later date. So you ***need to get legal advice urgently about how to get parental responsibility.***

- **If you are the mother of a baby who is under 6 weeks old:**

The adoption agency cannot place your baby for adoption until you have given your formal agreement to the placement for adoption, witnessed by a Cafcass officer. ***You cannot give this formal agreement until 42 days or more after your child is born.*** But that does not stop the adoption agency making arrangements for your baby to live with people who are approved by Children's services as temporary foster carers (foster for adoption carers) for the first 6 weeks. They may then go on to become prospective adopters after that<sup>26</sup>.

## **What are the consequences of agreeing to my child being placed for adoption?**

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If you give your formal written agreement to your child being placed for adoption (as explained above), you cannot then argue against an adoption order being made on your child at a later stage unless the court gives you specific permission. The court will only give this permission if ***you can prove there has been a change in circumstances*** since you agreed to your child being placed for adoption (or a placement order was made by the court).<sup>27</sup>

***It is therefore very important that you only sign the consent form after having taken independent legal advice first.*** To find a solicitor specialising in child care law and/or contact details for Family Rights Group Advice line, see part 6 of this advice sheet.

## **What happens if I don't agree to my child being placed for adoption?**

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If you don't agree to your child being placed for adoption but the adoption agency has decided that adoption is the right plan for your child, they can apply to court for a ***placement order***. This order would give them permission to place your child for adoption even if you didn't agree (see below).

## **When can the court make a placement order?**

---

The court can only make a placement order if ***both*** of conditions (1) and (2) below are met:

**Condition 1:** The court must be satisfied that either:

- a) ***the child is subject to a care order or***
- b) ***the 'threshold criteria' in s.31 Children Act 1989 have been proved:***<sup>28</sup> or
- c) The child has no parent or guardian.

The 'threshold criteria' are that the child is suffering or is likely to suffer significant harm, because

- i) the care given (or likely to be given) to the child if the order is not made, is not what would be reasonably expected of a parent; or
- ii) the child is beyond parental control.

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Harm means “ill-treatment or poor health or development including for example resulting from seeing or hearing the ill-treatment of another person” (i.e.: domestic abuse);

**Condition 2:** The court must **also** be satisfied that **either**:

- a) **each parent with parental responsibility for the child has agreed** to the child being placed for adoption with any prospective adopters **or**,
- b) the **court has decided the parents’ agreement should be dispensed with**.

The **court has the power to dispense with the parents’ consent if**

- i) they cannot be found or
- ii) they are incapable of giving consent, or
- iii) the **child’s welfare requires their consent to be dispensed with**;<sup>29</sup>

This last category means that the court can decide that your child can be placed for adoption even if you don’t agree if it thinks this is in your child’s best interests.

**Before making a placement order, the court must also consider**

- i) the **welfare principle**<sup>30</sup> which says that **the best interests of your child throughout his/her life are the most important consideration for the court**.<sup>31</sup>
- ii) the ‘**welfare checklist**’<sup>32</sup> which is set out in the law and looks at your child’s best interests including
  - your child’s wishes, background, age, sex, personal characteristics and needs;
  - any harm your child has suffered or is likely to suffer;
  - the likely effect on your child of ceasing to be a member of your original family and becoming a member of the adoptive family;
  - the relationship your child has with the rest of your family<sup>33</sup> (including you as parents and other relatives) and
    - the benefit to your child of these relationships continuing in the future;
    - the ability and willingness of anyone in your family being able to provide a secure home for your child which meets their needs met; and
    - your wishes and feelings and those of your family.

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- The court must also consider all its powers and not make a placement order unless this is in the child's best interests.<sup>34</sup>

Finally, the court must also consider any **contact arrangement** that would benefit your child before making a placement order. Once a placement order is made any pre-existing order for contact ceases to have effect.<sup>35</sup>

If a judgment is given in placement order proceedings by a high court judge or a circuit judge it may be published – see page 27 for further information about this.

## **What is the effect of a placement order?**

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A placement order gives Children's Services permission to place your child for adoption even if you do not agree. When a placement order is made, any existing care order ceases to have effect for the length of the placement order.<sup>36</sup>

Also, once a placement order has been made on your child, you cannot object to an adoption order being made at a later stage unless the court gives you specific permission for this.<sup>37</sup> The court will only give you this permission if you can prove there has been a change in circumstances since the placement order was made.

***The placement order stage is therefore the key time when real decisions are made about whether or not your child is likely to be adopted.*** In rare circumstances, you may still be able to argue against your child being adopted at a later stage (if you can prove a change in circumstances from when the placement order was made). But if a placement order is granted, it starts off a chain of events, which is very likely to result in your child being adopted. ***Therefore if you do not agree with your child being adopted, it is essential that you find a solicitor specialising in children law to represent you in the placement order proceedings as soon as possible.***

## **How does the adoption agency decide who to place my child for adoption with?**

---

The adoption agency can only place your child for adoption if:

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- i) it has permission to do so (i.e.: both parents with parental responsibility have either given their formal agreement to their child being placed for adoption or the court has made a placement order – for further information on this, see pages 18-22 above) and
- ii) they have found people who have ***already been approved*** by the adoption panel as being ***suitable to adopt*** a child and they think that these adopters are able to provide care that will meet ***your child's needs***. This means that once permission for your child to be adopted has been given, the adoption panel will look at your child's case again to give advice on whether the proposed carers will meet your child's needs. This is often called approving the 'match'.<sup>38</sup>

It is therefore important that you ***tell the social worker what you think your child's needs are and what arrangements should be made if any for your child to keep in touch with you or other members of the family.***

And, given the role of the Adoption Panel in advising on contact, you may want to ***write to the panel at this stage to say why you think your child will benefit from keeping some links with you or other members of the family,*** such as grandparents, brothers and sisters etc. Again you may want to copy your letter to the adoption agency which makes the final decision about the placement.

If you cannot agree the contact arrangements that will take place during the placement, you should ***discuss with your solicitor whether you should apply to court for a new contact order*** to operate during the placement.<sup>39</sup>

## **What happens during a placement for adoption?**

When your child is placed for adoption by the adoption agency, the following people have parental responsibility for your child:<sup>40</sup>

- The prospective adopters (although Children's Services can limit what they can decide),
- The adoption agency, and
- You (i.e. the parents, although Children's Services can also limit what you can decide).

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This means that, unless the adoption agency specifically restricts the things the prospective adopters can decide, they can make all major decisions about your child (other than changing your child's name or taking your child outside England and Wales for more than one month) without asking you or the adoption agency.<sup>41</sup>

As a parent, there may be very little you can do in practice to exercise your parental responsibility for two reasons:

- you are unlikely to know where your child is placed or have any contact with the adopters; and
- children's services will almost certainly limit what you can decide about your child.

However, your child will still be treated as being looked after by Children's Services during the placement for adoption. This means that regular reviews are carried out and an independent reviewing officer (IRO) will be responsible for monitoring your child's case and seeing that the plans made are implemented.

If you have any concerns about the plans not being put into effect, for example around contact, it is a good idea to contact the IRO to let them know the situation and discuss your concerns, although you would not normally be involved in the review after your child is placed for adoption.<sup>42</sup>

## **Can I remove my child once they are placed for adoption?**

- If your child is ***placed for adoption with your formal written consent*** (and that of the other parent), you ***cannot*** remove your child without first giving notice to the adoption agency.
- If the adoption agency does not think your child should be returned to you, they have seven days to apply to the court for a placement order to stop you removing your child.<sup>43</sup> You cannot take your child home during this time and will have to see what the court decides.
- If your child is subject to a ***placement order***, you may ***not*** remove the child unless the placement order is revoked.

## PART 4: HOW AND WHEN IS AN ADOPTION ORDER MADE?

### Who can apply for an adoption order to be made?

---

In this section, the person or couple who wishes to adopt are called the ‘adopters’.

In all cases:<sup>44</sup>

- the adopters must generally be over 21.
- A single person can apply to adopt on their own.
- A couple can apply whether or not they are married or civil partners. However if a person who is married or in a civil partnership wishes to apply for an adoption order, they must apply with their partner unless they cannot be found or the couple is permanently separated.

Most children are adopted after they have been placed for adoption by an adoption agency on behalf of Children’s Services. But, in some circumstances, a person can apply to adopt a child they are already caring for, even though the child is not the subject of a placement order.

- If your child was placed with the adopters by an adoption agency, your child has to have lived with them in their home for at least **10 weeks** before they can apply to court for an adoption order.<sup>45</sup>
- If your child has not been placed for adoption with the adopters by an adoption agency, then, unless the court gives specific permission for something different:
  - if the adopters were previously foster carers working for Children’s services, who decided they want to adopt your child [without the agreement of Children’s Services], they can only apply to adopt your child if your child has been living with them for **one year** before they apply to adopt;<sup>46</sup> and
  - in any other case (except step-parent cases), they can only apply to adopt your child if they have been living with them for **3 out of the last 5 years**.<sup>47</sup>

In each of these situations, the **adopters must write to Children’s Services to tell them of their intention to adopt your child at least 3 months before they apply for an adoption order**.<sup>48</sup>

## **Who is at the adoption hearing?**

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The following people will be formally involved in the case and will receive copies of all the papers (although some names and addresses may be removed for confidentiality reasons):<sup>49</sup>

- the adopters, who are the applicants;
- Children's Services, which is also required to file a report on the suitability of the adopters to adopt your child;
- you (i.e.: the parents who have parental responsibility); and
- anyone with an existing contact order.<sup>50</sup>

**Children** will not automatically be involved in the case, but they can be in some situations, for example:

- if you have been granted permission by the court to oppose the making of an adoption order (see next section),
- if your child does not agree to the adoption order being made, or
- if a Cafcass officer has recommended that your child should be represented and the court accepts this recommendation.

**Relatives** are not generally involved in the adoption case, unless they have an existing contact order. This means that if, for example, you are a relative who wants to keep in touch with the child after the adoption, you will need to apply for permission from the court to make your application for contact.

## **How will the court decide whether or not to make an adoption order?**

---

There are two issues the court must consider when deciding whether to make an adoption order:

**1) Parental consent:** The court can only make an adoption order if:

- i) You (i.e.: the parents who have parental responsibility) agree to adoption or
- ii) The court is satisfied your consent should be dispensed with.



If you are a parent who has parental responsibility, you will be directly involved in the adoption case so you will be notified of the hearing date and have a right to be present. This means you will have a chance to say what you think, but if:

- you agreed to your child being placed for adoption<sup>51</sup>, or
- you gave advance agreement to your child being adopted<sup>52</sup>, or
- your child is under a placement order<sup>53</sup>

you will not be able to argue against an adoption order being made unless the court gives you specific permission for this.<sup>54</sup> The court can only give you this permission if it is satisfied that there has been a ***change of circumstances***. For example, where a father has acquired parental responsibility after the child was placed for adoption.<sup>55</sup>

**Note also:** If you are a father without parental responsibility, and the mother has given her formal agreement to your child being placed for adoption, you will be treated as having also consented to your child being placed for adoption. And, even if you later get parental responsibility, you will not normally be asked for your agreement to the adoption and will not be able to oppose it. If you are in this situation, ***you should take urgent legal advice*** about any steps you can take to:<sup>56</sup>

- get parental responsibility;
- apply for permission to argue against an adoption order being made on your child; and/or
- argue that the court could make another order such as special guardianship and/or contact arrangements.

Details of how to contact a solicitor specialising in child care law and/or Family Rights Group Advice line can be found in part 6 of this advice sheet.

## **2) Welfare principle<sup>57</sup>**

When deciding whether or not to make an adoption order the court must also follow the welfare principle and checklist (described above on pages 21-22).

**Before making an adoption order**, the court must also:

i) consider whether it should make an order setting out any arrangement for the child to keep in touch with members of the family or others who are important to them;<sup>58</sup> &

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ii) only make an adoption order if it thinks this is best for the child compared to all other orders it could consider making for example, a special guardianship order.

#### **Important note**

The court should not make an adoption order (or an order permanently separating mother and child) unless it is satisfied that there is no other suitable plan which meets the needs of your child - 'nothing else will do'. The court can only decide this if it has considered evidence about the pros and cons of **each and every** realistic placement option for your child.<sup>59</sup> The options might include special guardianship in favour of family members (see below) and also the child returning home to either parent.

#### **Special guardianship order:**

This is a court order which secures a child's home with someone who is not their parent until they are 18, but the child remains part of your family and continues to be legally related to you. This order gives the special guardian parental responsibility so they are able to make almost all decisions about your child, without asking to you.

The order is intended to be long term so you would need the permission of the court to apply to end it before your child reaches 18. You would only get this permission if you could prove there had been a significant change in circumstances since the original special guardianship order was made. It is quite common for parents to continue to have some contact with their child under a special guardianship order. For further information see FRG advice sheet: [Special guardianship: what does it mean for birth parents?](#) <http://www.frg.org.uk/need-help-or-advice/advice-sheets> or contact FRG's advice line - contact details in part 6 of this advice sheet.

#### **What happens if the court gives me permission to argue against an adoption order being made?**

If you are given permission to oppose an adoption order being made, the court then has to decide whether or not to dispense with your agreement. The grounds for dispensing with the parents agreement are the same as when the court is making a placement order i.e.:

- that you cannot be found or

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- that you are incapable of giving consent, or
- that ***your child's welfare requires your consent to be dispensed with.***<sup>60</sup>

For more information on this see pages 18- 19.

This last category means that the court thinks that adoption is so important for your child that your agreement is not necessary.

## **What if my child was not placed with the adopters by an adoption agency?**

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If the adopters want to apply to court to adopt your child and your child was ***not*** placed with them for adoption by an adoption agency, they will have to prove to the court at the adoption hearing that either:

- i) you and the other parent with parental responsibility agree to the order being made or that
- ii) your agreement should be dispensed with, on the basis that adoption is so important for your child that your agreement is not necessary.

## **What is the effect of an adoption order?**

---

An adoption order cuts all legal ties between an adopted child, and their birth parents, and creates a new legal relationship between the child and the adoptive parents as if they were born to them.<sup>61</sup> Once an adoption order has been made it cannot be discharged (ended) by the court, even if there is a change of circumstances.

## **Will there be any publicity about my case?**

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Maybe. The basic rule is that a judgment in a family court case involving children **cannot** be published unless the hearing was held in public or the judge has given permission. However the rules have recently changed so that when a case is heard by a ***circuit judge or a High court judge***, certain judgements (for example in care proceedings) must be published 'unless there are compelling reasons' why they shouldn't be. This is decided on a case by case basis. You, your child and your family should not be identified but any professionals in your case would normally be named. If you are worried about publicity talk to your solicitor about it – they may be able to argue against it in court if you have good reasons to object.

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## PART 5: ADOPTION SUPPORT SERVICES

### Do I have a right to help and support with my child's adoption?

Yes. You should be offered

- i) a support worker who is independent of your child's social worker from the moment that adoption is identified as the plan for your child;<sup>62</sup> and
- ii) counselling and written information about adoption and related issues.<sup>63</sup> Counselling should also be available to brothers and sisters of a child who is adopted.<sup>64</sup>

You, your child's brothers and sisters and other relatives who have an important relationship with your child, have a right to an assessment of your need for support.<sup>65</sup> This may be particularly important to help you get **support to keep in touch with your child**, which might include you being able to use **family mediation services** to help resolve difficulties or tensions arising over contact or you getting help with the costs of keeping in touch with your child.<sup>66</sup>

For further information on this, see FRG advice sheet on Open Adoption  
<http://www.frg.org.uk/need-help-or-advice/advice-sheets>

## **PART 6: WHERE CAN I GET MORE INFORMATION AND SUPPORT?**

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**Citizens Advice** is an independent organisation providing free, confidential and impartial advice on all subjects to anyone. The address and telephone number of your local CAB can be found in the telephone directory. There is also advice on line on their website. They may be able to help you find a local solicitor.

Website: <http://www.citizensadvice.org.uk>. Advice on line Website: [www.adviceguide.org.uk](http://www.adviceguide.org.uk).

**Civil Legal Advice:** A free and confidential advice service. It provides information directly to the public on a range of common legal issues and helps people find legal help and information. It can also help you find legal advisors and find out if you are eligible for publicly funded free legal help.

Website: <https://www.gov.uk/civil-legal-advice> .

Telephone: 0845 345 4345. Minicom: 0845 609 6677

Monday to Friday, 9am to 8pm; Saturday, 9am to 12:30pm CLA find a legal advisor service at <http://legaladviserfinder.justice.gov.uk/AdviserSearch.do>

**Coram Children's Legal Centre** provides free independent legal advice to children, parents, carers and professionals. Their Child Law Advice Line provides free legal advice and information covering all aspects of law and policy affecting children. An advisor can be contacted on 08088 020 008. The advice line is open from 8.00am to 8.00pm Monday to Friday.

**Family Rights Group:** is an organisation which provides free telephone and email advice to family members who are involved with Children's Services about the care and protection of their children.

- Contact FRG's advice line for further advice, on 0808 801 0366. It is open Monday-Friday 9.30am-3.00pm. You can also email to [advice@frg.org.uk](mailto:advice@frg.org.uk).
- You can also visit <http://www.frg.org.uk/need-help-or-advice/advice-sheets>. where you can download other relevant advice sheets.

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- There are parent and family and friends carers discussion boards at:  
<http://www.frg.org.uk/discussion-board-for-homepage>.
- Family Rights group can also put you in touch with a Family Group Conference Service. Email [office@frg.org.uk](mailto:office@frg.org.uk).

**Grandparents' Association** is an organisation which provides advice and support to grandparents about caring for, or having contact with, their grandchildren. They can be contacted at: Moot House, The Stow, Harlow, Essex CM20 3AG Office: 01279 428040 Helpline: 01279 444964 E-mail: [info@grandparents-association.org.uk](mailto:info@grandparents-association.org.uk).  
<http://www.grandparents-association.org.uk/index.php>.

**Post-Adoption Centre** supports birth relatives. They offer counselling, advice and information via the Advice Line 020 7284 5879 Mon, Tues, Wed & Fri 10.00am – 1.00pm and Thurs evening 5.30pm – 7.30pm. They also offer:

- individual counselling at PAC
- outreach counselling clinics and
  - assistance with negotiating contact arrangements

5 Torriano Mews, Torriano Avenue, London NW5 2RZ, Tel: 020 7284 0555

**Specialist child welfare solicitor:** To find a specialist solicitor you can contact:

1. Solicitors Regulation Authority, Ipsley Court, Redditch, Worcestershire B98 0TD  
Telephone: 0870 606 2555 <http://www.sra.org.uk/consumers/find-use-instruct-solicitor.page>;
2. The Law Society of England and Wales, 113 Chancery Lane, London WC2A 1PL Tel: 020 7242 1222 Minicom: 0870 600 1560 Fax: 020 7831 0344  
E-mail: [info.services@lawsociety.org.uk](mailto:info.services@lawsociety.org.uk) [www.lawsociety.org.uk](http://www.lawsociety.org.uk)  
***You can search their website for details of local solicitors who are members of the Children Panel:***  
<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>
3. Civil Legal Advice (CLA) See details above.
4. Citizens Advice may be able to recommend a local solicitor specialising in child care law. (see details above)

## References

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<b>AA</b>	Adoption Act 1976 <a href="http://www.legislation.gov.uk/ukpga/1976/36/contents">http://www.legislation.gov.uk/ukpga/1976/36/contents</a>
<b>ACA</b>	Adoption & Children Act 2002 <a href="http://www.legislation.gov.uk/ukpga/2002/38/contents">http://www.legislation.gov.uk/ukpga/2002/38/contents</a>
<b>ASG</b>	Adoption Statutory Guidance 2013(Issued 1 <sup>st</sup> July 2013): <a href="http://www.education.gov.uk/aboutdfe/statutory/g0072314/guidance">http://www.education.gov.uk/aboutdfe/statutory/g0072314/guidance</a>
<b>AAR</b>	Adoption Agencies Regulations Act 2005 <a href="http://www.legislation.gov.uk/uksi/2005/389/contents/made">http://www.legislation.gov.uk/uksi/2005/389/contents/made</a>
<b>AAPCAR</b>	The Adoption Agencies (Panel and Consequential Amendments) Regulations 2012
<b>ASSR</b>	Adoption Support Services Regulations 2005 <a href="http://www.legislation.gov.uk/uksi/2005/691/contents/made">http://www.legislation.gov.uk/uksi/2005/691/contents/made</a>
<b>CPPCR</b>	Care Planning, Placement and Case Review Regulations 2010 <a href="http://www.legislation.gov.uk/uksi/2010/959/contents/made">http://www.legislation.gov.uk/uksi/2010/959/contents/made</a>
<b>CA</b>	Children Act 1989 <a href="http://www.legislation.gov.uk/ukpga/1989/41/contents">http://www.legislation.gov.uk/ukpga/1989/41/contents</a>
<b>FLR</b>	Family Law Reports
<b>FP(A)R</b>	Family Proceedings (Amendment) Rules 2005 <a href="http://www.legislation.gov.uk/uksi/2005/1976/contents/made">http://www.legislation.gov.uk/uksi/2005/1976/contents/made</a>

<sup>1</sup> S.20 Children Act 1989 <http://www.legislation.gov.uk/ukpga/1989/41/contents> and Children Act 2004 <http://www.legislation.gov.uk/ukpga/2004/31/contents>

<sup>2</sup> s.52(6) ACA

<sup>3</sup> Re B-S (Children) [2013] EWCA Civ 1146

<sup>4</sup> Re A (Father: Knowledge of Child's Birth) [2011] EWCA Civ 273

<sup>5</sup> Reg 4 Care Planning, Placement and Case Review Regulations 2010 (CPPCRR)

<sup>6</sup> Early Permanence and approval of prospective adopters: DfE statutory guidance (July 2014) para 15

<sup>7</sup> NMS 7.4

<sup>8</sup> Regs 13 & 14 AAR

<sup>9</sup> Para 2.26 guidance, and NMS 7.4

<sup>10</sup> Reg 14 AAR

<sup>11</sup> Reg 14(3) AAR, AST 2.33

<sup>12</sup> Reg 17 AAR

<sup>13</sup> Ch 2 para 63 Adoption Guidance

<sup>14</sup> s1 Adoption and Children Act 2002

<sup>15</sup> Ch 1, para 53 Adoption Guidance and *Hofstetter v LB Barnet* [2009] EWCA 328 (Admin),

<sup>16</sup> Reg 18 AAR

<sup>17</sup> Reg 26 AAR

<sup>18</sup> Reg 32 AAR

<sup>19</sup> Reg 17 & 19 AAR

<sup>20</sup> s.19 ACA

<sup>21</sup> s.21 ACA

<sup>22</sup> Children & Family Court Advisory Support Service

<sup>23</sup> s.52(3)ACA

<sup>24</sup> s.52(6) ACA

<sup>25</sup> s.52(9)(b) ACA

<sup>26</sup> Reg 35(4) AAR and paras 88-92 ACA guidance.

<sup>27</sup> s.47 ACA

<sup>28</sup> s.21 ACA

<sup>29</sup> s.52(1) ACA

<sup>30</sup> s.1 ACA

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<sup>31</sup> s.1(2) ACA  
<sup>32</sup> s.1(4) ACA  
<sup>33</sup> s.1(4)(f) ACA  
<sup>34</sup> s.1(6) ACA  
<sup>35</sup> ss.26(1) & 27(4) ACA  
<sup>36</sup> s.29 ACA  
<sup>37</sup> s.47 ACA  
<sup>38</sup> Reg 33 AAR  
<sup>39</sup> s.26 & s.27(4) ACA . For further information see advice sheet on open adoption.  
<sup>40</sup> s.25 ACA  
<sup>41</sup> s.28 ACA  
<sup>42</sup> Reg 36, AAR  
<sup>43</sup> s.30-36 ACA  
<sup>44</sup> ss.49-51 ACA  
<sup>45</sup> s.42(2) ACA; 'home' can include a home abroad - Re A (A child) [2009] EWCA Civ 41; in the case of a couple jointly adopting a child, they do not both have to present in the home together for the whole 10 week period - Re G (a child) [2008] EWCA Civ 105  
<sup>46</sup> s.42(4) ACA  
<sup>47</sup> s.42(5) ACA  
<sup>48</sup> s.44 ACA.  
<sup>49</sup> FP(A)R 2005  
<sup>50</sup> s.43 ACA  
<sup>51</sup> s19 ACA  
<sup>52</sup> s20 ACA  
<sup>53</sup> s.47(2)&(4) ACA  
<sup>54</sup> s.47(3)&(5) ACA  
<sup>55</sup> s. 47(7) ACA  
<sup>56</sup> s.52(9) ACA  
<sup>57</sup> s.1 ACA  
<sup>58</sup> s.46(6) ACA  
<sup>59</sup> Re B (A Child) [2013] UKSC 33; Re B-S (Children) [2013] EWCA Civ 1146; Re G (A Child) [2013] EWCA Civ 965  
<sup>60</sup> s.52(1) ACA  
<sup>61</sup> s.67 ACA  
<sup>62</sup> Para 2.25 guidance, and NMS 7.4  
<sup>63</sup> Reg 14 AAR and pp 6-11 Guidance  
<sup>64</sup> Reg 4 ASSR  
<sup>65</sup> s.4 ACA & Reg 13 ASSR  
<sup>66</sup> Reg 3 & 8 ASSR

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