

Adoption and Children Act 2002 ("ACA")

As you are probably already aware, the main provisions of the ACA came into force on 30 December 2005.

These provisions represent probably the biggest changes to child care law since the Children Act 1989 and have huge implications for social work and legal practice.

The purpose of this briefing is simply to headline the major changes.

The ACA, although long in gestation, followed the Prime Minister's Office own review of adoption law and practice in 2000. The ACA's stated primary objectives are to update adoption law and to increase the number of looked after children who are placed for adoption; only time will tell whether the new provisions will deliver the latter goal.

BRIEF SUMMARY OF MAIN PROVISIONS

a) Abolition of freeing orders – replacement with placement orders (PO)

- *freeing applications issued before 30/12/05 will continue under the existing court procedures/rules*
- *from 30/12/05, a child will not be able to be placed for adoption unless authorised by a PO or parental consent*
- *LAs will have to apply for PO in care proceedings if the Agency has decided that the child should be placed for adoption*
- *if the parents do not consent to a PO, their consent will have to be dispensed with; the criteria for dispensation will be the welfare of the child*

ADDENDUM 3

- the birth parents' 'Parental Responsibility' (PR) will not be extinguished by a PO
- when placed with prospective adopters, the LA will share PR with them and the birth parents ; the LA will determine the extent to which the other PR holders exercise their PR.
- subsequent to a PO, birth parents will still be able to apply for leave to oppose an adoption order; to be granted leave, they will have to show that there has been a "change in circumstances" since the PO was made.
- a LA will be able to apply to revoke a PO if the plan for the child changes; parents (with PR) will be able to apply to revoke a PO if the child is not placed for adoption and there has been a change in circumstances since the PO was made.
- if a PO is revoked, a care order is revived if it was in force before the PO was made.

b) Parental consent to placement for adoption

- birth parents can relinquish a child for adoption by giving formal consent under s19 ACA; this has to be witnessed by a CAFCASS officer.
- the giving of consent gives the LA PR; when the child is placed for adoption, the prospective adopters will also share PR. The LA will determine the extent to which the other PR holders exercise their PR.
- once the prospective adopters apply for an adoption order, if the birth parents have not withdrawn their s19 consent, they will not be able to oppose the adoption order without the court's leave; they will have to demonstrate a "change in circumstances."

c) Adoption applications – birth parents will have the right to be given notice of the date and place of the adoption final hearing and will be able to attend to be heard on the question of whether an order should be made (unless they have applied unsuccessfully for leave to oppose the adoption).

Application cannot be made to court until children been in placement for 10 weeks. For children placed under S19 consent child can be returned within 14 days if application not lodged.

Locally, Judge Hunt has indicated that adoption hearings will be dealt with in 2 stages, with the prospective adopters (and child, where appropriate) excused from the first stage.

d) s26 contact orders

- once a child placed for adoption, the LA has no duty to promote contact under CA
- the LA, the child, any parent, legal guardian or any relative can apply for contact with a child under s26 ACA, during or after PO proceedings.
- Adoptive parents may be given leave to apply for a variation in any contact order made. They cannot apply as of right.
- the court must consider whether to make a s26 contact order when deciding whether to make a PO.
- s26 orders will not be enforceable once an adoption order made
- s8 contact orders will have to be applied for, as at present, in relation to post-adoption contact.

f) Harmonisation of adoption and children law

- the welfare of the child becomes the paramount consideration in adoption decisions made by the Court **and** adoption agencies
- new welfare checklist, delay and no order principles apply

g) Unmarried couples (including same sex couples) will be able to adopt jointly provided they are deemed to be in an “enduring family relationship”

- i) **New Panel Forms – the Form E and matching report have been replaced by the “Child’s Permanence Report” and the “Adoption Placement Report” (APR). The APR is completed by the social worker and there is provision for adopters to comment on the form regarding information received, any issues outstanding and future Adoption Support.**

- ii) **An Adoption Placement will be formally reviewed by an Independent Reviewing Officer – 4 weeks, 3 months and thereafter 6 monthly. The Review will discuss progress/court application/Adoption Support.**

ACA PROVISIONS ALREADY IN FORCE

The following provisions of the ACA are already in force:

- 31/10/03 – Adoption Support Regs – legal **duty** for LA to **assess** child and adoptive family’s need for adoption support before matching Panel and on request at any time during child’s minority; **discretion to provide support.**

- since 30/4/04 – independent review mechanism (run by BAAF) of agency proposals not to approve or to terminate approval

FURTHER INFORMATION:

Please go the BAAF website for useful information about the ACA – **www.baaf.org.uk**