

GUIDANCE

for

WITNESSING CONSENT TO THE MAKING OF AN ADOPTION ORDER

(in Partner and other Non-Agency Adoptions)

This policy explains the legal framework for witnessing the consent in all types of non-agency adoptions, including partner adoptions (formerly referred to as step parent adoptions) when there is an application for an Adoption Order. The guidance also sets out the role of the Reporting Officer in these cases.

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1.0 INTRODUCTION

- 1.1 This guidance gives an overview of the legal framework for witnessing the consent of partners and all other types of non-agency adoptions when there is an application for an Adoption Order. The guidance also explains the role and duties of the Reporting Officer when witnessing consent of the birth parents (both the parent with care and the parent without care of the child) in partner and other non-agency adoptions.

2.0 CONSENT TO ADOPTION

2.1 For an Adoption Order to be made each parent with parental responsibility and guardian (including a special guardian) must either consent to the adoption or their consent must be dispensed with.

2.2 The categories of non-agency adoptions are:

- Adoption by the partner of the child's birth or adoptive parent (i.e. a stepparent) make up the vast majority of non-agency adoptions and are dealt with in detail in this guidance
- Adoption by relatives of the child
- Adoption by foster carers
- Inter-country adoption.

3.0 PARTNER ADOPTION

- 3.1 The application for an Adoption Order is made by the partner of a birth parent, or by the partner of an adoptive parent. To make an application a parent must be either: the married spouse, civil registered partner, or a partner who is unmarried or civil registered but lives with the birth parent.
- 3.2 An application can be made when the child has lived with the applicant for a continuous period of at least six months, and notice of the intention to apply has been given to the local authority¹.
- 3.3 It is likely that there will be fewer partner adoptions under the Adoption and Children Act 2002 than under previous legislation; because the married spouse or civil registered partner of a birth parent can acquire parental responsibility for the child in other ways:
- By formal agreement
 - By a parental responsibility order
 - By a residence order that can now last until the child reaches 18².

The local authority and the court will consider whether one of these alternatives seems to be more in the interests of the child than an adoption order.

- 3.4 The continuing parent who is the partner of the applicant will retain parental responsibility for the child after adoption, which will be shared equally with the adopting partner. The other birth parent, and any guardian of the child, will lose their parental responsibility by the making of the Adoption Order.

Consent Form

- 3.5 Form A104 is not suitable for the 'continuing' parent because it states that the person signing will be no longer legally treated as the parent and will have no rights in respect of the child. There is currently no prescribed form specifically for consent to adoption by a birth parent whose partner is applying to adopt. By crossing sections out, the A104 can be amended, or consent can be given in another written form³, which indicates that consent in these circumstances does not have to be given in the prescribed form.
- 3.6 Although it is not compulsory to use a prescribed form for consent to adoption⁴; some courts have felt that using a form to witness consent of the birth parent remains the most sensitive and appropriate method. Cafcass has produced a form for the Reporting Officer to use to witness the consent of the 'continuing' parent (attached as an appendix to this guidance). This form should not be confused with the 'prescribed form' A104 as its purpose is fundamentally different. The court will decide in each case whether consent has been given in

¹ The notice of intention must be given to the LA within a timeframe of at least three months before the application is made but no longer than two years must pass between the serving of the notice and the application to court for the application to be valid.

² (S12 Children Act 1989)

³ Section 52(7) of the Act

⁴ Section 52

accordance with the requirements of the Act. Therefore, the use of the form in this guidance must be agreed with courts locally.

4.0 ADOPTION BY RELATIVES

- 4.1 The child will always be a party to adoption applications by relatives other than the partner of a birth parent. A Children's Guardian will be appointed unless the court is satisfied that this is not necessary, in order to safeguard the interests of the child. Then it is likely that the same practitioner will be appointed as Reporting Officer to witness any consent.
- 4.2 An application can be made when the child has lived with the relative(s) for at least three years in the last five (whether continuous or not), unless the court gives permission for an earlier application. Notice of the intention to apply must have been given to the local authority at least three months before the application is made.

Consent form

- 4.3 In adoptions by relatives, the consent of birth parents with parental responsibility and any guardian is given on the prescribed Form A104.

5.0 ADOPTION BY FOSTER CARERS

- 5.1 Carers with whom birth parents have placed child/ran in a private arrangement can apply to adopt them and foster carers can apply to adopt looked after children in their care without the agreement of the local authority.
- 5.2 **Private foster carers** can apply to adopt if the child has lived with them for at least three years in the last five years, unless the court gives leave for an earlier application. The notice of intention to apply must have been given to the local authority at least three months before the application is made.
- 5.3 **Local authority foster carers** can apply to adopt if the child has lived with them for a continuous period of at least one year, unless the court gives leave for an earlier application, and as with other non agency adoptions, the notice of intention to apply must be given at least three months before the application can be made.
- 5.4 In adoption by foster carers the child is not automatically a party to the application. The court may at any time direct that the child should be made a party to the proceedings where:
- The child wishes to make an application, or;
 - Has evidence to give the court or a legal submission to make which has not been given or made by any other party, or;

- There are other special circumstances⁵.

5.5 Where the child is made a party to the proceedings the court may appoint a Children's Guardian. Alternatively, the court has power to ask a Children and Family Reporter (CFR) to prepare a confidential report on matters relating to the welfare of the child. One of the duties of the CFR is to consider and advise the court whether it is in the child's best interests to be made a party. The same practitioner is likely to be appointed as Reporting Officer to witness any consents.

Consent form

5.6 In adoptions by foster carers the consent of birth parents with parental responsibility and any guardian is given on the prescribed Form A104.

⁵ Rule 23(2) FPAR 2002

6.0 THE ROLE OF THE REPORTING OFFICER

- 6.1 The appointment and duties of the Reporting Officer in adoption proceedings are set out in detail in Rules 69 to 72 of The Family Procedure (Adoption) Rules 2005.
- 6.2 The role of the Reporting Officer is to ensure that the consent of the birth parents and any guardian to the making of the adoption order, is given unconditionally and with a full understanding of the nature and effect of the order, and to witness the giving of that consent.
- 6.3 The Reporting Officer should investigate all the circumstances relevant to the parents or guardians giving consent to ensure their rights are protected. This piece of work is one of the few incidences where it is not necessary for Cafcass to see the child.

Ensuring valid consent

- 6.4 The task of witnessing consent can be a complex task⁶. The Reporting Officer should be vigilant about factors that that might invalidate consent, such as incapacity due to mental ill health or learning disability.
- 6.5 The local authority report to the court for an adoption order application (Annex A) provides information which will indicate to the Reporting Officer if the parents or guardians have the mental capacity to consent or if other factors may affect their ability to give unconditional consent with a full understanding.
- 6.6 There should be a certified copy of the full birth certificate and the accuracy of this document needs to be checked with the consenting birth parents.
- 6.7 Finding a birth parent whose whereabouts are unknown, or proving to the court s/he cannot be found, is the responsibility of the applicant(s) not the Reporting Officer or the local authority preparing the Annex A report. However, if the local authority is concerned that the applicant has not made sufficient effort the local authority should consider making their own investigations or assist the applicant to find the birth parent. Although, a birth father without parental responsibility is not required to give his consent to the making of the Adoption Order and so will not be consulted or interviewed by the Reporting Officer.

⁶ Rules 72(1) of the FPAR 2005 for examples of all the circumstances relevant to a parent or guardian's consent has to be investigated

The court report

6.8 On completion of her/his investigations the reporting officer must:

- Submit a brief report⁷ confirming that in the opinion of the Reporting Officer, consent has been given unconditionally and with full understanding, and drawing attention to any matters which in his or her opinion may be of assistance to the court in considering the application before the court.
- The original copy of the signed consent form must be submitted to the court.

Directions Hearings

6.9 The Reporting Officer must attend all directions hearings unless the court directs otherwise⁸.

⁷ Rule 72(1)

⁸ Rule 72 [4]

APPENDIX 1

CAFCASS ADOPTION CONSENT FORM FOR PARTNER ADOPTION

Consent by the child's parent to adoption by their partner⁹.
The Adoption and Children Act 2002

Name of child.....

Before signing this form it is recommended that you seek legal advice about consenting to adoption and the effect on your parental rights. Publicly funded legal advice may be available from the Community Legal Service. You can get information about this or find a solicitor through CLS Direct on www.clsdirect.org.uk or by telephoning 0845 345 4 345

This form may be used where consent to adoption is given by a parent who is the spouse, civil partner or partner of the applicant (1).

I, the undersigned _____ consent to the making of a final adoption order in respect of _____ (my child), who is the child to whom the attached birth certificate relates(2), in favour of (3) _____ (the applicant)

I understand that the making of an adoption order will end the parental responsibility of anyone who holds it at present, other than myself, and that once the adoption order has been made my child's other birth parent will no longer legally be treated as a parent of my child, and I will share parental responsibility equally with _____ (the applicant).

I understand that the making of an adoption order will result in my child becoming equally part of my partners family as mine.

I understand that when the application for an adoption order is heard, this document may be used as evidence of my consent to the making of the order, unless I inform the court otherwise.

I understand that if my partnership with the applicant ends after the adoption is made, the applicant will continue to my child's other legal parent.

As far as I know, the only person(s) or body (ies) who has/have taken part in the arrangements for my child's adoption is/are (5) _____

⁹ Section 144 (7) of the 2002 Act provides that: '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. Note: a person who has entered into a civil partnership can be a "step parent".'

I have not received any payment or reward from any person making arrangements for the adoption of my child.

[I have taken legal advice] /[I have not taken legal advice, but I have been advised to do so], about giving my consent to adoption and the effect on my parental rights.

*(delete as appropriate)

I consent, unconditionally and with full understanding of what is involved, to the making of a final adoption order for _____ (my child).

Signed.....

On the.....day of20xx

Witness statement

This form was signed by

on the.....day of20xx

before me (print full name).....

Signed.....

Office of witness*.....

Address of witness.....

.....

.....

Notes

- 2. If the child has previously been adopted, a certified copy of the entry in the Adopted Children Register should be attached and not a certified copy of the original entry in the Registers of Births.

Where two or more consent forms are supplied to the court at the same time, they may both or all refer to a certificate attached to one of the consent forms.

- 3. Enter the name of the applicant for the adoption order.
- 5. Enter the name and address of any person or adoption agency that took part in the arrangements for the child's adoption.

*In England and Wales this form must be witnessed by an officer of the Children and Family Court Advisory and Support Service or, where the child is ordinarily resident in Wales, by a Welsh family proceedings officer. In Scotland it should be witnessed by a Justice of the Peace or a Sheriff, and in Northern Ireland by a Justice of the Peace.

Outside the United Kingdom, the form should be witnessed by a person who is authorised by law in the place where the document is signed to administer an oath for any judicial or legal purpose, a British Consular Officer, a notary public, or, if the person executing the document is serving in the regular armed forces of the Crown, an officer holding a commission in any of those forces.