

Adoption Handbook

This document contains the full range of Cafcass guidance on adoption, including:

- Adoption – which form do I use?
- Guidance for Placement proceedings
- Guidance for Witnessing Consent to the Making of an Adoption Order (in Partner and other Non-Agency Adoptions)
- Guidance for Adoption Proceedings and Section 84 Proceedings
- [Good Practice Guidance for Adoption Agencies and Cafcass: Children Relinquished for Adoption](#) (this is a stand-alone document)
- Inter-country Adoption Guidance

The guidance documents set out the legal framework and the role and duties of the Children’s Guardian/Reporting Officer in each case. The contents table below provides a brief description of each guidance document and a link to the relevant section of the Handbook.

The forms and templates to be used in adoption cases can be accessed through Word or ECMS. If you are not sure which form is required, please see the ‘Which form do I use?’ section of this Handbook.

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Adoption - Which form do I use?

1.0 Where to find consent forms

- 1.1 The forms which need to be completed when witnessing consent to placement and/or adoption can be found on the [HMCTS website](#).
- 1.2 Cafcass templates can be accessed through ECMS and via Microsoft Word, 'New' template and selecting the 'Public Law' tab.

2.0 Adoption queries

- 2.1 For any queries relating to individual cases, please contact Cafcass Legal on 07776 470065

HMCTS reference	Template title	Full title	When to use it
A100	Consent Any Prospective Adopters	Consent to the placement of my child for adoption with any prospective adopters chosen by the Adoption Agency Section 19 of the Adoption and Children Act 2002	This form should be used when a parent or guardian ¹ consents to their child being placed for adoption with any prospective adopter(s) chosen by the adoption agency. Form A103, 'Advance Consent to Adoption' may be signed alongside this form.
A101	Consent Identified Adopters	Consent to the placement of my child for adoption with identified prospective adopters.	This form should be used when a parent or guardian consents to their child being placed for adoption with identified prospective adopters only. Identified prospective adopters may be named or identified by an assumed name.

¹ In this table, 'parent' means a parent with parental responsibility; 'guardian' includes a special guardian.

		Section 19 of the Adoption and Children Act 2002	Form A103, 'Advance Consent to Adoption' may be signed alongside this form.
A102	Consent Prospective Breakdown Any Prospective	Consent to the placement of my child for adoption with identified prospective adopter(s) and, if the placement breaks down, with any prospective adopter(s) chosen by the adoption agency Section 19 of the Adoption and Children Act 2002	This form should be used when a parent or guardian consents to their child being placed for adoption with identified prospective adopters, and if the placement breaks down, with any other prospective adopter(s), chosen by the adoption agency. Identified prospective adopters may be named or identified by an assumed name. Form A103, 'Advance Consent to Adoption' may be signed alongside this form.
A103	Advance Consent to Adoption Section 20	Advance Consent to Adoption Section 20 of the Adoption and Children Act 2002	This form should be used when a parent or guardian gives their advance consent to the making of a future adoption order, in favour of: <ul style="list-style-type: none"> • any prospective adopter(s) chosen by the adoption agency; or • named prospective adopters; or • prospective adopters identified by an assumed name; or • named prospective adopters, and if this placement breaks down, any prospective adopter(s) chosen by the adoption agency; or; • Prospective adopters identified by an assumed name, and if this placement breaks down, any prospective adopter(s) chosen by the adoption agency.
A104	Consent to Adoption	Consent to Adoption The Adoption and Children Act 2002	This form should be used when a parent consents to their child being adopted. It should be used when an application for adoption has begun and a case or serial number is known, and where there is no advance consent to adoption. This form should not be used when the partner of a parent is applying to adopt, as it states that the person signing it will be no longer legally

			<p>treated as the parent and will have no rights in respect of the child. Instead see Form A107 below for partner adoptions.</p>
A105	Consent Order Section 84	<p>Consent to the making of an Order under Section 84 of the Adoption and Children Act 2002</p>	<p>This form should be used when a parent or guardian consents to an adoption order being made abroad under section 84 of the Adoption and Children Act 2002.</p> <p>A section 84 order confers parental responsibility upon persons who intend to adopt a child outside the British Isles (inter-country adoptions).</p> <p>An application for a section 84 order must be made to the High Court.</p>
A106	Withdrawal of Consent	<p>Withdrawal of Consent</p> <p>Sections 19 and 20 of the Adoption and Children Act 2002</p>	<p>This form should be used when a parent or guardian wishes to withdraw their consent to placement for adoption and/or adoption, after forms A100, A101, A102 or A103 have been signed.</p> <p>The parent or guardian can withdraw consent at any time up until the adoption application is made; after this time, the parent may only withdraw their consent with permission from the court.</p>
A107	Consent for partner adoption	<p>Consent by the child's parent to adoption by their partner</p> <p>The Adoption and Children Act 2002</p>	<p>This form may be used where consent to adoption is given by a parent who is the partner of the applicant.</p> <p>Section 144 (7) of the Adoption and Children Act 2002 provides that: 'a person is the partner of a child's parent if the person and the parent are a couple'. A couple is defined as two people who are married, in a civil partnership or in an enduring family relationship.</p>
N/A (Cafcass form available via Word templates or ECMS)	Statement Not to be Notified of Adoption	<p>Confirmation that the parent does not wish to be given notice of any adoption application</p> <p>Section 20 (4) Adoption and Children Act 2002</p>	<p>This form should be used when, after giving advance consent to adoption, a parent or guardian do not wish to be notified of an application for an adoption order. The parent or guardian can withdraw this statement at any time.</p> <p>Without completing this form the parent or guardian must otherwise be notified of the date and venue of the adoption order application.</p>

Guidance for Placement Proceedings

1.0 Introduction

- 1.1 This guidance gives an overview of the legal framework for Placement Proceedings; it explains the legal consequences of a Placement Order and gives guidance on the role of the Children's Guardian and the Reporting Officer in Placement Order Proceedings.
- 1.2 Separate guidance is available in relation to [witnessing parental consent to placement of children relinquished for adoption](#). Guidance in relation to applications for Adoption Orders is also available separately within the Adoption Handbook.

2.0 The legal framework

Parents and guardians

- 2.1 The term 'parent' in this guidance refers to every parent with parental responsibility for the child. The term 'guardian' includes a guardian properly appointed after the death of the parent under section 5 Children Act 1989 and special guardians of the child.

Authorisation to place for adoption

- 2.2 A local authority cannot place a child for adoption unless they have authority to do so which comes from one of the following:
- Consent to the placement by each parent or guardian;¹ or,
 - The making of a Placement Order.²

Grounds on which a Placement Order can be made

- 2.3 The court may not make a Placement Order under Section 21 Adoption and Children Act 2002 unless:
- a) The child is the subject of a Care Order; or,
 - b) The court is satisfied that the child is suffering or likely to suffer significant harm;³ or,
 - c) The child has no parent or guardian; **and**
 - d) The court is satisfied that each parent or guardian of the child:
 - Has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn consent, or

¹ Section 19 ACA 2002

² Section 21 ACA 2002

³ The threshold conditions met under S31(2) of the Children Action 1989

- Should have their consent dispensed with because they cannot be found, are incapable of giving consent, or the welfare of the child requires their consent to be dispensed with.

Placement for adoption without parental consent

2.4 If the local authority has decided that a child should be placed for adoption, but the parent or guardian does not consent, the local authority must obtain a Placement Order before the child can be placed in an adoptive family. There are broadly three circumstances in which a local authority will apply for a Placement Order, they are:

a) Combined Care and Placement Proceedings

These will be the majority of cases. When a local authority decides during Care Proceedings that the care plan is adoption, it has a duty to apply for a Placement Order within those proceedings. The Placement Order application will usually be heard immediately after the Care Order application in the same hearing. There is no required notice period before a Placement Order application can be issued in Care Proceedings. This was confirmed by a decision of the Court of Appeal in June 2006, Re [P-B \(A Child\) EWCA Civ1016 June 2006 \[Court of Appeal\]](#). This means that the Placement Order application can be issued at a very late stage in the Care Proceedings - even during the final hearing, although this should be avoided if at all possible and will only be likely to be accepted if the plan for adoption was one that was being pursued albeit subject to a decision from the agency decision maker.

The Children's Guardian who is appointed in the Care Proceedings will usually be appointed for the Placement Proceedings. If any parent or guardian indicates during these combined proceedings that they wish to consent to their child being placed for adoption, the court can ask Cafcass to witness consent under s19 but only after the Care Proceedings have concluded. A parent's consent under s19 in Placement Proceedings which has not been withdrawn is evidence of consent and is one of the grounds on which a Placement Order can be made.

b) Placement Proceedings following the granting of a Care Order

A Children's Guardian will be appointed for the Placement Proceedings. This will usually be the Children's Guardian who was appointed in the Care Proceedings. If any parent or guardian indicates during free-standing Placement Proceedings that they wish to consent to their child being placed for adoption, the court can ask Cafcass to allocate an Officer to witness the consent to placement under s19.⁴ The local authority can choose to rely on consent given under s19 as authority to place the child for adoption. However, the local authority may decide to pursue the application for a Placement Order as this would prevent the need to recommence proceedings if consent is withdrawn. If the parent expresses an intention to consent to the Placement Order, then the court may discharge the Children's Guardian and appoint the Cafcass officer as Reporting Officer to report on the issue of consent,

⁴ Section 19 Adoption and Children Act 2002

but may rely on the parent's legal representative (if they have one) to confirm consent to the order.

c) Placement for a child not subject to a Care Order or Care Proceedings

If a child is accommodated at the request of parents⁵ and the local authority decides the child should be placed for adoption, each parent and guardian must give consent⁶ or a Placement Order must be made, before the child can be placed for adoption (the grounds on which a Placement Order can be made are set out in 2.3 of this guidance).

If a parent has provided their consent to placement under s19, that consent can be withdrawn and the child must be returned to their care within a specified period of time. This will be seven days if the child has not been placed for adoption, or 14 days if the child is already placed. If the grounds (set out in paragraph 2.3) are satisfied, the local authority will apply for a Placement Order.

3.0 Placement proceedings and the role of the Children's Guardian

- 3.1 Placement Proceedings are 'specified' and so the court will appoint a Children's Guardian when a Placement Order application is issued (unless it is satisfied that it is not necessary to do so to safeguard the interests of the child).⁷
- 3.2 The appointment and duties of the Children's Guardian are set out in Rules 16.3, 16.16 to 16.21 of the Family Procedure Rules 2010 and Part 3 of Practice Direction 16A.
- 3.3 The court can dispense with the parent's/guardian's consent to placement for adoption on the grounds set out in 2.3(d).
- 3.4 The local authority is not required to satisfy the court that a placement is available when applying for a Placement Order. It is also not required to have identified a particular family for a child, taken a 'match' to adoption panel, or have provided information to the court or the Children's Guardian about any families that are being or have been considered for a child, before a Placement Order is made.
- 3.5 Placement Proceedings are not a re-run of the Care Proceedings. Where the 'significant harm' conditions⁸ have been proved in earlier Care Proceedings the first requirement of the grounds for a Placement Order has already been satisfied. The threshold in care is also the threshold for placement.

⁵ Section 20 Children Act 1989

⁶ Section 19

⁷ Rule 16.3 FPR 2010

⁸ Section 31(2) Children Act 1989

The role and duties of the Children's Guardian

- 3.6 The Children's Guardian must appoint a solicitor for the child (unless a solicitor has already been appointed).
- 3.7 In safeguarding the interests of the child, the Children's Guardian must investigate as s/he thinks appropriate or as the court directs.
- 3.8 The Guardian must advise the court on such matters as the wishes of the child, the timing of the proceedings and the options available to the court.⁹
- This advice must be provided in a written report advising on the interests of the child. Although this may be a brief report, it differs from the report in the Care Proceedings¹⁰ because it must address the Adoption and Children Act 2002 welfare checklist. Refer to the appendix 2 of this guidance for a useful "walkthrough" of the welfare checklist.¹¹
 - The written report should also consider whether the option being recommended to court (placement for adoption) will safeguard the welfare of the child taking account of all the reasonable alternatives.
 - The court will decide if the placement report should be disclosed to other parties in the proceedings. If adopters have been identified during Placement Proceedings (likely to be unusual - see para 3.4 above), care must be taken to ensure that any information is removed from the report about the prospective adoptive family if their identity is not to be disclosed to the parents.
- 3.9 The Children's Guardian or the solicitor appointed for the child must attend all directions hearings unless the court directs otherwise.
- 3.10 The Children's Guardian should assist the court in deciding if the welfare of the child requires the court to dispense with the parent's/guardian's consent to placement.
- 3.11 Before the court makes a Placement Order, a crucial role for the Children's Guardian is to make sure that sufficient consideration has been given to the contact arrangements, including whether any orders should be made. This relates to the Adoption Agency regulations¹² which require that the local authority, when deciding to place a child for adoption, consider what arrangements it should make for allowing any person contact with the child for the duration of a Placement Order.
- 3.12 Consideration of the child's needs, wishes and feelings in relation to contact during the Placement Proceedings may then become relevant when the court comes to consider any subsequent application for an adoption. The use of the 'My Needs, Wishes and Feelings pack' may be a useful tool for this purpose.

⁹ Paragraph 6.6 of Practice Direction 16A

¹⁰ The two reports will be separate unless the court has made a direction that they be combined.

¹¹ Adoption: The Modern Procedure by Heather Swindells CQ and Clive Heaton, 2006

- 3.13 It is not the role of the court or the Children's Guardian to be involved in choosing the adoptive family in Placement Proceedings. The local authority will need the court's permission to advertise a child for adoption before the Placement Order is granted.

The legal consequences of a Placement Order

- 3.13 The legal consequences of a Placement Order are as follows:
- a) The local authority is authorised to place the child for adoption with any adopters chosen by it.
 - b) A Placement Order does not take away the parent's parental responsibility (PR). It is shared between the parents and the local authority, and also with the prospective adopters from placement but the extent to which the parents and prospective adopters can exercise parental responsibility will be determined by the local authority (the PR of parents and the local authority terminates at the making of an Adoption Order) so it is likely to be very limited.
 - c) The Placement Order suspends a Care Order, so that if the Placement Order is revoked the Care Order revives.
 - d) The child is still 'looked after', but the duty to promote contact no longer applies. Contact arrangements are at the discretion of the local authority that can allow or refuse contact. Alternatively, a Contact Order under section 26 of the Adoption and Children Act 2002 can be made on application to the court.

Revocation of Placement Orders

- 3.14 The process for revoking Placement Orders is as follows:
- a) A Placement Order can be revoked on application to the court if at a future point adoption is no longer a likely or desirable outcome for a child. The local authority or the child (who would normally require a litigation friend) can apply for revocation as of right, at any time after the Placement Order has been made.
 - b) A parent may apply to revoke at any time after the Placement Order has been granted **if the child has not been placed for adoption and the parent has obtained the permission of the court**. Obtaining permission of the court is a two stage process: firstly, has there been a change in circumstances; and secondly, should leave be granted? In exercising its discretion in the second stage, welfare is a consideration but not paramount.
 - c) As the welfare of the child is a consideration, the court may join the child as a party and appoint a Children's Guardian.
 - d) Once permission is granted, an application to revoke a Placement Order is specified proceedings and a Children's Guardian must be appointed by the court (unless it is satisfied that it is not necessary to do so to safeguard the interests of the child).

End of appointment

- 3.15 The appointment of the Children's Guardian ends at the conclusion of the Placement Proceedings. The Children's Guardian will make arrangements for the child to be informed of the outcome of the case and plans should also be made to say goodbye to the child, depending on their age and level of understanding. If appropriate, the Children's Guardian should consider the possibility of an appeal. It is good practice for the Children's Guardian, at the end of the proceedings, to contact the Independent Reviewing Officer (IRO) who has responsibility for the child until an adoption order is made and they will then ensure that the care plan is implemented.
- 3.16 If there has been a gap between the conclusion of the Care Proceedings and the making of a Placement Order, and one meeting has already occurred between the Guardian and IRO at the conclusion of the Care Proceedings, again, it is good practice to contact the IRO a second time at the conclusion of Placement Proceedings to update her/him on any new developments.¹³ For further information about the role of an IRO refer to: Guidance for Independent Reviewing Officers in [Cafcass IRO Practice Note](#) and the [IRO Handbook](#).

Arrangements for Freeing

- 3.17 In cases where Freeing orders were made and have not been revoked consult Cafcass Legal for advice. Further information is also available in the Cafcass Legal Alert "[Statutory Orphans](#)" and the [Revocation of Freeing Orders](#).

4.0 The Reporting Officer role in applications for Free Standing Placement Orders

Appointment

- 4.1 The court will appoint a Reporting Officer where it appears that during Placement Proceedings any parent or guardian of the child is willing to consent to an Order that their child is placed for adoption. A named individual will be appointed as the Reporting Officer, although if one parent lives in a different part of the country it may be necessary, for practical reasons, to ask a colleague to witness consent; in these cases the report will still be by the named individual..

Duties

- 4.2 The duties of the Reporting Officer in Placement Proceedings can be found in Rules 16.30 to 16.32 of The Family Procedure Rules 2010 and part 5 of Practice Direction 16A.4.3. The Reporting Officer must witness the signature of the parent or guardian on the form prescribed by the rules (or a form to like effect) which confirms their consent to the making of a Placement Order (see Appendix 1 for the relevant form).

¹³ Regulation 36 of the Adoption Agencies Regulation 2005

- 4.3 When section 20 consent to adoption has been given the parent or guardian must be notified of the date and venue of the adoption order application, unless the parents make a statement that they do not wish to be informed of the application for an adoption order. There is no prescribed form in which the parents make such a statement, however, the Cafcass template available in word and ECMS, 'Confirmation that the parent does not wish to be given notice of any adoption application' may be used.
- 4.4 The role of the Reporting Officer is to ensure that the parent or guardian of the child is fully aware of the implications of adoption and their consent to the making of a Placement Order is given unconditionally and with a full understanding of the nature and effect of their consent.
- 4.5 The Reporting Officer should investigate all the circumstances relevant to the parent or guardian's consent to the Placement Order. On receiving the Local Authority Annex B Report, the Reporting Officer should allow sufficient time to read the documentation.

Ensuring informed consent

- 4.6 If the local authority has made an application for a Placement Order, the parents' consent would be to the making of a Placement Order (rather than s19 consent to placement¹⁴).
- 4.7 If it becomes clear that the parent is consenting to the making of the Placement Order, the court may appoint an officer of Cafcass as a Reporting Officer (rather than as a Children's Guardian) to report on the consent of the parent to the Order (not the placement itself). The Reporting Officer will have to amend the explanation of the legal consequences of consenting to a Placement Order within the form (see amended consent form provided in Appendix 1 of this guidance).
- 4.8 The parent needs to have a clear understanding of the legal consequences when signing their consent and therefore should take legal advice before signing. The legal consequences of giving consent to a Placement Order are set out at 3.13 of this guidance.
- 4.9 If a parent fails to attend the first appointment, the Reporting Officer should consider offering one or more additional appointments as appropriate to the particular circumstances of the case.

Ensuring valid consent

- 4.10 The Reporting Officer should be vigilant about factors that might militate against a parent's consent being valid, such as incapacity due to mental ill health or a learning disability. The local authority evidence to the court will indicate whether the parents or guardians have the capacity to consent. A birth parent under the age of 18 can give valid consent if they are assessed as having sufficient maturity and understanding (see

¹⁴ See section 5 of this guidance for more information on s19 consent to placement

more information on minor parents in paragraph 4.15). However, if there is any doubt about parental capacity, the Reporting Officer should seek directions from the court. If this arises in a case being heard by magistrates, then the case may need to be re-allocated to a Judge.

- 4.11 The Reporting Officer must also make sure that the parent or guardian has been offered support and counselling by a social worker other than that appointed for the child (to the extent that this is possible in what may have been, until the indication that parents are willing to consent, contested Care and Placement Proceedings). It is good practice for the Reporting Officer to make sure that birth parents are aware of post adoption support services, the adoption contact register and the facilities for indirect letter box contact. Most parents will already be legally represented in the placement and Care Proceedings, but for those who are not, it is good practice to advise them to seek legal advice.
- 4.12 Fathers without parental responsibility¹⁵ may already be involved in the care and Placement Proceedings, but are not required to give their consent to placement for adoption. The local authority evidence will have set out the circumstances of the father without parental responsibility and the efforts the local authority have made to ensure he is notified of the Care Proceedings. The court rules provide that a father without parental responsibility who was joined as a party in the Care Proceedings will be party to Placement Proceedings.

Reporting to the court

- 4.13 On completion of her/his investigations the Reporting Officer must:
- Submit a report 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/her opinion may be of assistance to the court;
 - Deliver the original of the signed consent form to the court which is hearing the Placement Order application (a copy should be retained on Cafcass' file);
 - Make a report to the court if the parent or guardian is unwilling or unable to consent.
 - Attend hearings as directed by the court
- 4.14 If consent is not given, the proceedings for a Placement Order remain contested and the Reporting Officer will become the Children's Guardian.

Minor parents in Placement Proceedings

- 4.15 If the parent is under 18 and therefore considered a "child", the Family Procedure Rules 2010 state that they may conduct proceedings without a Litigation Friend where they

¹⁵ Parental Responsibility: the birth mother will have PR, fathers have PR if they are married to the mother at the time of the birth or at any time after the child's birth, or if they have entered into a formal agreement with the mother and sent it to the court, or if they are registered as the father of the child on the birth certificate after 1/12/03 or if the court makes an order.

have obtained the court's permission to do so or if a solicitor deems them competent to give instructions. If they are not competent, they should have a Litigation Friend to conduct proceedings on their behalf.¹⁶.

- 4.16 The court may make an order appointing a Litigation Friend but only if they consent to act. The court can appoint:
- a) The Official Solicitor, who will only accept an invitation to act if their criteria set out in the Practice Direction March 2013¹⁷ are met
 - b) An Officer of the Service (Cafcass), who will only act if consent is forthcoming. (note that although it is provided for in the rules, the statutory functions of Cafcass limit our role to acting for children whose welfare is at issue; this would not be the case unless there are concurrent children proceedings¹⁸); or
 - c) Some other person.
- 4.17 When a child reaches the age of 18, provided they have litigation capacity, a Litigation Friend's appointment comes to an end, even if the proceedings continue.

5.0 The legal consequences of giving Section 19 consent to placement

- 5.1 The main use of the s19 consent to placement is for parents relinquishing children for adoption, which does not therefore include Placement Proceedings, unless that consent is subsequently withdrawn. See the separate guidance in relation to [witnessing parental consent to placement of children relinquished for adoption](#).
- 5.2 In cases involving Care Orders, the local authority cannot rely on a parent's s19 consent to placement made during Care Proceedings (see para 2.4a). Following the conclusion of Care Proceedings, consent to placement under s19 can be given, which allows the child to be placed for adoption. However, as the s19 consent can be withdrawn which would necessitate a return to court, local authorities often apply for a Placement Order (see para 2.4b). If s19 consent is not withdrawn during the Placement Proceedings, it can be used as evidence for the making of a Placement Order.
- 5.2 The legal consequences of giving s19 consent to placement are as follows:
- a) The local authority shares parental responsibility with the parents and with the prospective adopter[s] from the date of placement. The extent to which the parents may exercise it is determined by the local authority.
 - b) The child is looked after, but the duty to promote contact no longer applies. Contact arrangements are at the discretion of the local authority or Contact Orders can be made if an application is made to the court (section 26 ACA 2002).
 - c) The parents can withdraw consent at any time until an application is made for an adoption order. If there is no Care Order, the local authority is then obliged to return

¹⁶ Rule 16.6 FPR 2010

¹⁷ See <https://www.gov.uk/government/publications/appointment-of-official-solicitor-in-family-proceedings-practice-note>

¹⁸ Practice Direction 16A, Part 2: note the same practitioner cannot act for the minor parent and the child in the same proceedings

the child to the parents if they request it (within seven days if the child is in foster care, and 14 days if placed for adoption). If the child is subject to a Care Order the local authority will then apply for a Placement Order.

- d) If the child has been placed with the prospective adopters for more than 10 weeks, the prospective adopter(s) can apply for an adoption order. If, following the application for an adoption order, the parents or guardians then withdraw their consent to placement, the prospective adopters are not obliged to return the child to the local authority or parents unless a court orders it.
- e) If s19 consent to placement is not withdrawn before the Adoption Order is applied for, it is deemed consent to the making of an Adoption Order.
- f) A parent or guardian may not oppose the making of the Adoption Order unless they have obtained permission from the court.

Appendix one – Consent form

(This form must be agreed with local courts before it is used)

Cafcass Adoption Consent Form for Consent for Placement Orders (When Appointed as a Reporting Officer)

This form is for consent to a placement order which will lead to the placement of my child for adoption with any prospective adopters chosen by the Adoption Agency.

Consent to the placement of my child for adoption with any prospective adopters chosen by the local authority

Before signing this form you are advised to seek legal advice about consenting to placement for 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

Name of Child

Name and Address of Local Authority in the matter:

I consent to _____ (my child), who is the child to whom the attached certified copy of the entry in the Register of Live Births relates to being placed for adoption with any prospective adopter(s) chosen by the local authority.

I understand that if I consent to my child being placed for adoption when the agency has applied for a Placement Order, I am also consenting to the making of a Placement Order.

If my child is adopted, I understand that I will no longer legally be treated as the parent and that my child will become a part of the adopter (s') family.

I also understand that when my child is placed with the prospective adopter(s), they will also have parental responsibility. In addition, the adoption agency (local authority) has parental responsibility and will determine to what extent the parental responsibility of the prospective adopters or myself should be restricted.

I understand that I may withdraw my consent at any time until the Placement Order is granted, but if I do withdraw my consent, the local authority will ask the court to dispense with my consent to the making of the Placement Order. However, the withdrawal of my consent to placement is ineffective if it is given after an application for an adoption order is made.

I will be entitled to be told when the prospective adopters make their application to the court, but I will only be able to oppose the making of the adoption order if the court gives me permission to do so.

For the court to consider giving permission, I must be able to show that there has been a change of circumstances since I gave my consent or as the case may be since the Placement Order was made.

I understand that once I have given my consent to placement and the Placement Order is made I will have no right to contact with my child, except by arrangement with the agency or under a court order.

I am entitled to apply to the court for an order for contact with my child while the Placement Order is in force, and the court will decide on the contact arrangements it considers are most appropriate.

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 my child being placed for adoption and the effect on my parental rights. **(delete as appropriate)*

I consent unconditionally and with full understanding of what is involved, to the placement of
(My child) for adoption with any prospective adopter(s) chosen by the local authority.

Signed

On the day of 20

Witness statement

This form was signed by

on the day of 20

before me (print full name)

Signed.....

Office of witness*

Address of witness

Appendix two – Welfare walkthrough

Welfare Checklist – “Walkthrough”¹

The Adoption and Children Act s1 (2) states that the paramount consideration of the court or adoption agency must be the child’s welfare throughout his or her life. It is the welfare of the child “throughout his or her life” which must be considered.

Section 1(3) applies the principle that delay is prejudicial to the child’s welfare and places delay among the foremost mandatory considerations, although still subject to the welfare principle. It is important to consider the National Adoption Standards, which include the production of a plan for permanence for all looked after children at the four monthly review and a decision on prospective adopters within six months of application.

Section 1(4) (a) is crucial especially where the child has a strong sense of identity or awareness with their birth family.

Section 1(4)(b) encompasses all aspects of a child’s needs, health social moral emotional and psychological.

Section 1(4) (c) looks at the life-long prospects. It is two-fold:

- 1) the emotional and psychological impact of adoption;
- 2) right of abode, nationality, succession, and inheritance.

In considering “*having ceased to be a member of the original family*” it is important to address the following:

- 1) The extinction of the parents’ parental responsibility and the complete severing of all legal ties with the birth family.
- 2) The loss of the child’s sense of identity with the birth family and the risk of damage to the child’s self-esteem and psychological well-being.
- 3) The damaging sense of loss to such a child in seeing himself as abandoned or unloved by his parents or extended birth family.
- 4) The article 8 right to respect for private and family life” provisions are important in this context.

In considering “becoming an adopted person“, one must address the provision for the child of a permanent substitute family where the adopters are fully committed to fulfilling their legal and parental responsibilities.

Section 1(4) (d): where the adoption of an older child with strong links with the birth family is being considered, and where there is a younger child with strong links to older siblings, factors

¹ Adoption: The Modern Procedure by HHJ Heath Swindells CQ and Clive Heaton. Published by Family Law, 2006. ISBN 0 85308 969 8

of age, and background may carry particular weight. Consideration such as special educational need or physical disability must also be included. Religion, racial origin and cultural background must also be considered as it must by the adoption agencies but not at the expense of harmful delay to the child.

Section 1(4) (e) uses the same definition of harm as the Children Act welfare checklist. Section 31 is amended by ACA 2002 which adds impairment from seeing or hearing the ill-treatment of another. Domestic violence, including the impact on children of witnessing abuse, is therefore to be considered in all Children Act and Adoption proceedings.

Section 1(4) (f) has a wide focus and embraces the following:

- 1) The **value** to the child of a continuing relationship with his or her relatives.
- 2) The wishes and feelings of those relatives.
- 3) This includes the important sibling relationship, which is a lifelong relationship.

Section 1(6); the range of powers of the court. Consideration must also be given to the alternative options for permanence. Adoption is to be considered in a context of permanence with a range of options for finding families for looked after children who need them. The range of options includes:

- 1) rehabilitation with birth parents;
- 2) placement with extended family members or friends;
- 3) residence orders/ residence orders together with a 91(14) restriction;
- 4) long-term fostering, especially where consideration is being given to preserving sibling relationships;
- 5) special guardianship orders;
- 6) adoption.

An order should not be made unless the court considers that the making of the order would be better for the child than not making it.

Guidance for Adoption Proceedings and Section 84 Proceedings

1.0 Introduction

- 1.1 This guidance explains the legal framework for adoption under the Children and Adoption Act 2002 and the consequences of an Adoption Order, as well as setting out the professional duties of the Children's Guardian and the Children and Family Reporter as they relate to adoption proceedings. The guidance also explains the legal framework for Section 84 applications (which is an application for parental responsibility prior to adopting a child abroad) although the duties of the Children's Guardian remain the same as in Adoption Proceedings. [Guidance on inter-country adoption is available](#).
- 1.2 There are two types of adoption proceedings where a Children's Guardian or Child and Family Reporter might be appointed, they are:
- **Agency adoptions** – where the child was placed for adoption by an adoption agency, which is almost always a local authority; and,
 - **Non-agency adoptions** – partner (sometimes known as step-parent) adoptions, adoption by relatives or foster carers, and others where the child was not placed for adoption by an agency.

2.0 The Legal Framework

Parents and Guardians

- 2.1 The term 'parent' in this guidance refers to birth parents with parental responsibility for the child; the term 'guardian' includes Special Guardians of the child.

Adoption Order

- 2.2 The effect of an Adoption Order is to remove parental responsibility from the parent(s) and local authority and place it with the adopters. The birth parents become former parents and do not retain any of the rights of a parent (except in partner adoptions where the partner of the applicant retains parental responsibility).
- 2.3 The making of an Adoption Order extinguishes any Children Act 1989 Order in place at the time, although contact orders under section 51A of the Adoption and Children Act 2002 can be made at the same time as the Adoption Order. An order under section 51A can also be made to prohibit contact between the child and a named person. The Adoption Order will also discharge a Placement Order or Section 26 Contact Order.
- 2.4 Where a Placement Order is in force, or a parent or guardian has given consent to placement for adoption¹ which has not been withdrawn, parents and guardians may

¹ Section 19 Consent

only oppose the making of an Adoption Order with the leave of court. Leave will only be granted if the following two limb test is satisfied: 1) the court is satisfied that there has been a change in circumstances of a nature and degree that justify leave being given, (recently, although it was a highly unusual set of facts, the courts have accepted that a change of circumstances can include a relative coming forward who previously was unaware of the child's birth (Re LG (Adoption: Leave to Oppose) [2015] EWFC 52) and 2) that it would be in the interests of the child for permission to be granted.

- 2.5 Section 1(6) of the Act provides that the court can only make an Adoption Order where it considers that doing so is better for the child than not doing so. When considering the application for an Adoption Order the court must consider all the alternative orders available under the Adoption and Children Act 2002 as well as the Children Act 1989, and the option of not making any order.

Grounds on which Adoption Order can be made

- 2.6 An Adoption Order can only be made in the circumstances set out in either (a), (b) or (c);
- a) The court is satisfied that each parent or guardian of the child:
- consents to the making of the Adoption Order, or;
 - has consented under section 20 of the Children and Adoption Act and does not oppose the making of the Adoption Order;² or
 - their consent should be dispensed with.
- b) The court is satisfied (in local authority agency adoptions) that the child has been placed for adoption by a local authority with the prospective adopters with whom the order is proposed to be made, and either:
- was placed for adoption with the consent of each parent or guardian, the consent of the mother was given when the child was at least six weeks old, and the consent(s) were not withdrawn before the Adoption Order was applied for;³ or
 - the child was placed for adoption under a Placement Order, and no parent or guardian has been given leave to oppose the making of the Adoption Order.
- 2.7 The court will not make an Adoption Order unless it is satisfied that there have been sufficient opportunities by the local authority to see the child with the prospective

² A parent or guardian may not oppose the making of an adoption order under subsection (b) without the court's leave

³ A parent or guardian may not oppose the making of an adoption order under subsection (b) without the court's leave

adopter(s).⁴ These visits are part of the investigation leading to the local authority Annex A court report.⁵

Timing of the application for an Adoption Order

2.8 The decision to apply for adoption is usually agreed between the child (if s/he is of sufficient understanding), the prospective adopters, and the Adoption Agency. However, the prospective adopters do not need the approval of the local authority to make their application.

2.9 The timing of the application and the need for notification of intention to apply for the Adoption Order will depend on the nature of the placement;

- In **Agency adoptions** the adopters can apply for an Adoption Order after the child has lived with them for at least ten weeks. Notification of intention is not required.
- In **Non-agency adoptions** the time periods of the child living with the applicant(s) before the application can be made are:
 - Partner adoptions – six months
 - Local authority foster carers – twelve months
 - Any other applicant – three out of the last five years.

(The court can give leave to local authority foster carers or any other applicants for an application to be made earlier than these time limits.)

2.10 Non-agency prospective adopters must give not less than three months and not more than two years notice to the local authority of their intention to apply for an Adoption Order.

Consent in local authority adoptions

2.11 One of the legal consequences of a Placement Order or section 19 consent to placement is that parents and guardians are not able to oppose the making of the Adoption Order unless they are given leave of the court to do so. Leave will only be granted by the court if it is satisfied that there has been a change in circumstances which justifies the giving of leave and it is in the interests of the child.

Dispensing with consent

2.12 In both agency and non-agency adoption, if the application is contested by the parents the prospective adopters must ask the court to dispense with parental consent on one of the following grounds:

⁴ If a couple are adopting this must be with both prospective adopters

⁵ A child who is the subject of an adoption order application is not a 'protected' child. The Local Authority's duty is specifically to investigate the child's circumstances and report about whether the adoption order applied for is in the child's best interests

- The parent or guardian cannot be found or is incapable of giving consent, or
- The welfare of the child requires the consent to be dispensed with.

(The burden of proof rests with the applicant(s) for the Adoption Order)

2.13 In these circumstances, the Children's Guardian or Child and Family Reporter's advice to the court on whether the parents' consent should be dispensed with is a crucial safeguard for the child. The Guardian's assessment will include five key factors:

- Consideration of the child's welfare, throughout his or her life
- The welfare checklist
- Any arrangements for contact
- Is the order necessary and proportionate?
- Would any other order adequately promote the welfare of the child?

The Local Authority Report: 'Annex A'

2.14 When an application for an Adoption Order is made, in both local authority and non-agency adoptions, the local authority must prepare a report (referred to as the Annex A Report) on the suitability of the adopters and whether adoption is in the best interests of the child. In assessing the child's best interests the report should address the ACA 2002 welfare checklist.

2.15 In non-agency adoptions, the best practice is for local authorities to begin preparing the Annex A report when the notice of intention is given, and before the application can be made. This will allow the local authority time to discuss with the prospective adopters possible alternative orders which could potentially be in the interests of a child.

The possible alternatives for prospective non-agency Adoption Order applications

2.16 Alternatives to an Adoption Order may be appropriate for non-agency adoption applicants, such as partners (step-parents), relatives or carers. An Adoption Order places parental responsibility solely with the adopters and ends the parental responsibility of the birth parents (except in partner adoptions, see 2.2), creating a lifelong legal relationship between the adopters and the child. However, other legal avenues can be used to obtain parental responsibility and secure child arrangements which may be in the interests of the child.

2.17 The child's wishes and feelings are integral to any decisions and must inform the plans for the future. Some children may not want to be adopted; even if they know that their parents cannot care for them, they may want their legal relationship with their birth family preserved. For other children, especially those who have been abused, the security, permanence and sense of belonging of adoption may be crucial to their emotional wellbeing. The use of the needs, wishes and feelings pack will be a useful

tool to work through with the child to explore the nature of the relationships between the child and other parties involved.

- 2.18 If the partner (which under the Adoption and Children Act 2000 includes spouse, civil partner or person in an enduring family relationship) of the birth parent wishes to acquire parental responsibility they may apply to adopt their partner's child without ending their partner's parental responsibility, but there are alternative legal avenues to obtaining parental responsibility. Partners who are married or in civil partnerships can enter into:
- A Parental Responsibility Agreement;⁶ or apply for
 - A Parental Responsibility Order⁷.
- 2.19 The alternative for partners who are not married to or civil partners of the birth parent is to apply for a Child Arrangements Order which can bring with it parental responsibility, lasting until the child is 16 or until the order is discharged. The court can extend such an order until the child is 18 in exceptional circumstances. The partner will acquire parental responsibility for the child which is shared equally with all other holders of parental responsibility.
- 2.20 In the case of other relatives or prospective carers who are not related to the child, who want to acquire parental responsibility, such as foster carers, the alternatives to adoption include:
- a) A Child Arrangements Order specifying where the child will live (for details see 2.19), or
 - b) A Special Guardianship Order. The special guardians share parental responsibility with the birth parents and guardians and the order lasts until the child is 18 unless it is discharged. The special guardians can exercise parental responsibility to the exclusion of parents and guardians on most issues.

The court

- 2.20 Prospective adopters can make their application to any court; it is not necessary to apply to the court which made any previous orders.

The legal effect of the application

- 2.21 The application prevents an accommodated child being moved by the local authority or the parents and guardians, unless the court gives permission, or the local authority needs to exercise its statutory powers because of significant harm to the child.⁸

⁶ Parental responsibility is shared equally with all others who have PR

⁷ Parental responsibility is shared equally with all others who have PR

⁸ Sections 30-36 Adoption and Children Act 2000

The child as a party

2.22 Unlike in Placement Proceedings, a child is not automatically a party to Adoption Proceedings. The court rules provide that the child will be party when;⁹

- Permission has been granted by a court for parents or guardians to oppose the making of the Adoption Order;
- The child opposes the making of the Adoption Order;
- A Child and Family Reporter recommends that it is in the best interests of the child to be a party to the proceedings and that recommendation is accepted by the court;
- The child is already an adopted child;
- The prospective adopters are relatives of the child, (other than a partner of a birth parent);
- Any party to the proceedings or the child is opposed to the arrangements for allowing proposed contact, or a person not being allowed contact with the child after the making of the Adoption Order;
- There are complex international factors.

3.0 Children's Guardians in Adoption Proceedings

Appointment of a Children's Guardian

- 3.1 When the court decides to make a child a party to the adoption proceedings a Children's Guardian will be appointed, unless the court is satisfied that it is not necessary to do so in order to safeguard the interests of the child.¹⁰
- 3.2 At any stage in proceedings, the court can decide to join the child as a party and appoint a Children's Guardian.
- 3.3 When appointing a Guardian, the court will usually request the appointment of the same Children's Guardian who was previously appointed for the child.

⁹ Rule 14.3 FPR 2010

¹⁰ Rule 6.23 and Rule 14.5 FPR 2010

The role and duties of a Children's Guardian

- 3.4 The role and duties of the Children's Guardian are set out in Rules 16.3, 16.18 to 16.21 of The Family Procedure Rules 2010 and Practice Direction 16A.
- 3.5 The Children's Guardian must appoint a solicitor for the child unless a solicitor has already been appointed. In particular the Guardian must:
- Instruct the solicitor representing the child, advising him or her on all matters relevant to the interests of the child, including the possibility for an appeal during proceedings
 - Check with the local authority to confirm whether the applicants are known to the respondent birth parents, to ensure relevant names and addresses are kept confidential where necessary
 - Give advice to the child as is appropriate having regard to his/her understanding
 - Contact or seek to interview persons whom s/he thinks appropriate or as the court directs
 - Make investigations as are necessary to carry out her/his duties
 - Obtain such professional assistance as appropriate or which the court directs
 - Advise the court on the child's ability to understand the nature of proceedings, including the child's views about undertaking particular assessments or examinations
 - Advise the court as to the appropriate forum and timings for the proceedings
 - Advise the court of the most suitable options - from those available - for the particular child
 - Any other matter on which the court seeks his/her advice or on which s/he considers that the court should be informed
 - File a written report with the court unless the court directs otherwise, advising on the interests of the child in accordance with the timetable set by the court.
- 3.6 The role of the Children's Guardian is to safeguard the welfare of the child in adoption proceedings. The welfare issues, which have led the court to make the child a party to proceedings, will guide the Guardian's investigation. The Guardian must apply the Adoption and Children Act (2002) welfare checklist to the issues in the case, and consider whether the Adoption Order appears to be the one most likely to secure the welfare of the child as opposed to the other alternatives available to the court.
- 3.7 Before the court makes an Adoption Order, it must consider contact arrangements and hear the views of all parties. Sections 51A and 51B set out the types of order the court can make at the same time as an Adoption Order. The Children's Guardian must advise the court of the child's needs, wishes and feelings in relation to contact, and whether, in the interests of the child, any contact orders should be considered.

- 3.8 When considering contact arrangements, careful consideration must be given as to whether the contact will be supportive to the placement, as research suggests it can be in some cases. The potential risks that contact could undermine the relationship between the child and adopters will also need to be considered, as will the frequency and type of contact and how it should be handled with the child, arrangements to review contact, and contingency plans in case of difficulties.
- 3.9 Post adoption contact can take the form of:
- **Indirect contact** – exchange of information, such as photographs or letters. If it is an agency adoption, this can be through a confidential adoption agency letter box service or a one way provision of information to be held in a letter box facility
 - **Direct contact** –for example, a face to face meeting, phone calls and other electronic communications. The court can consider establishing agreements or undertakings about contact, or make orders under section 51A or 51B.
- 3.10 As part of the Guardian's analysis, s/he must consider if there are any other people in the child's life who are important to the child and could have a role to play in safeguarding the child's interests. If the Children's Guardian is able to identify someone of importance to the child and it appears that their role in the child's life has not been sufficiently considered by the local authority, the Guardian must advise the person that it may be possible for them to join proceedings¹¹ and that they should take legal advice.
- 3.11 Under the Adoption Support Services Regulation 2005, local authorities have the duty to assess support needs and discretion as to provide support to adoptive families. The support services are:
- Financial support - including ongoing payments or lump sums, introductory and settling in expenses, court fees and legal costs
 - Support groups for adoptive parents and adoptive children
 - Support for contact arrangements between adoptive children and their birth relatives or with other people with whom they share significant relationships
 - Training for adopters in meeting their child's needs
 - Therapeutic services for children
 - Services to ensure the success of the adoptive placement or adoption
 - Counselling, advice and information (this support can also be provided to non - agency adoptive families).
- 3.12 Regulations require that the local authority plan ahead for adoption support at each stage of placement and adoption. The Children's Guardian should check that appropriate support services and, where relevant, plans are in place at the Adoption Order application and that there are clear arrangements in hand for provision after the Adoption Order, where appropriate. For further information on post adoption support refer to [Standards for Adoption Support](#).

¹¹ Rule 14.3 FPR 2010

Separate Legal Representation for the child¹²

- 3.13 If the child's solicitor, having taken into account the views of the Children's Guardian and any direction of the court, considers that:
- a) The child wishes to give instructions which conflict with those of the Children's Guardian; and
 - b) S/he has sufficient age and understanding, to give such instructions on her/his own behalf,
- the solicitor will conduct the proceedings in accordance with instructions received from the child. The Guardian will then play whatever role in the proceedings the court directs. In these circumstances the Children's Guardian may wish to seek advice from Cafcass Legal.

Attendance at hearings

- 3.14 The Children's Guardian or the solicitor for the child must attend all directions hearings unless the court directs otherwise.
- 3.15 The court must notify birth parents (unless the birth parents have requested not to be notified) and guardians of the final hearing date of the Adoption Order. Parents and guardians are entitled to attend the court and be heard but cannot oppose the application without leave of the court in cases where a Placement Order has been made¹³.
- 3.16 The Children's Guardian and child's solicitor should establish during directions hearings what arrangements have been made about the management of the court hearing, such as ascertaining if parents and guardians will attend, and making sure that everyone is safe at the court and their confidentiality maintained.
- 3.17 An important aspect of ensuring safety and confidentiality for the child and the Prospective adopters is the confidentiality of court reports.
- 3.18 Any report in adoption proceedings cannot be disclosed, even to other parties without the permission of the court.¹⁴ The court must consider whether any information should be deleted, for example, information likely to disclose, the identity and/or address of the child or adoptive applicants. The Children's Guardian or CFR should therefore highlight for the court any information in their report which should remain confidential if reports are disclosed, in order to ensure a child is safeguarded and his/her welfare prioritised.

¹² Rule 16.21 FPR 2010

¹³ Rule 14.16 FPR 2010

¹⁴ Rule 14.13 FPR 2010

- 3.19 At the final hearing the Children's Guardian should write a letter, which can be kept on the court file, for the child in the interests of his/her later life needs to help explain what happened and why decisions were made about them.¹⁵

Communicating the court's decision to the child

- 3.20 The Children's Guardian will ensure that arrangements have been made to inform the child of the court's decision.

4.0 Child and Family Reporters in Adoption Proceedings

Appointment of a Child and Family Reporter

- 4.1 In adoption proceedings the court may ask a Children and Family Reporter (CFR) to prepare a report 'on matters relating to the welfare of the child'. The CFR is appointed to safeguard the welfare of the child who is the subject of the Adoption Proceedings. As the child is not a party, the CFR does not appoint a solicitor for the child.

The role and duties of a Child and Family Reporter

- 4.2 The role and duties of the CFR in adoption proceedings are set out in Rule 16.33 FPR 2010 and Practice Direction 16A.
- 4.3 The duties of the CFR are similar to those of the Children's Guardian and include consideration about contact and adoption support. To see the full list of duties refer to 3.5 of this guidance. However, a particular duty of the CFR is to:
- Consider whether it is in the best interests of the child to be made a party to the proceedings, and if so, notify the court of his/her opinion together with the reasons for that opinion.
- 4.4 The role of the CFR is to safeguard the welfare of the child in adoption proceedings through the investigation of specific welfare issues considering the impact of future plans for the child.
- 4.5 The CFR may meet with the child, to discuss the circumstances of case and the contents of the report (subject to the child's age and understanding) including any reference in the report about the child's views on the application.
- 4.6 Like the report of the Guardian, the confidentiality of the CFR's report is an essential aspect of safety planning for the child and the prospective adopters. The CFR should highlight for the court any information which should remain confidential if his/her report is disclosed in order to ensure a child is safeguarded and his/her welfare prioritised.

¹⁵ For all adoptions on or after 30th December 2005, the adopted adult has a legal right to see the court's records of their adoption including the application form (but not the documents attached to it), the Annex A and Cafcass Report

- 4.7 Like the role of the Guardian, the CFR should also establish during directions hearings what arrangements have been made for the court hearing as outlined in 3.16 of this guidance, and plans as to how the outcome of the case will be communicated to court.

5.0 Children’s Guardians in Section 84 Proceedings

- 5.1 A Section 84 order gives parental responsibility to prospective adopters prior to them taking the child abroad specifically for adoption. An application for a Section 84 order must be made to the High Court.

Legal framework

- 5.2 The law and procedure follows the format of a local authority adoption. Therefore, the prospective adopters will have been approved as adopters according to the law in the country where they live. The UK local authority will have complied with regulations to determine that placement with and adoption abroad, by these applicants is in the child's best interests.
- 5.3 The child will always be a party to this application and a Children's Guardian and Solicitor will be appointed.

Timing of an application

- 5.4 An application for a section 84 Order cannot be made until the prospective adopters have lived with the child for at least 10 weeks in the UK.

The role of the Children’s Guardian in Section 84 Proceedings

- 5.5 The role and duties are the same as in Adoption Proceedings; refer to detailed guidance at 3.5 and 3.6 of this guidance.
- 5.6 Before making a section 84 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.¹⁶
- 5.7 Contact arrangements might be similar to those proposed in adoption application refer to further guidance at 3.7 – 3.9.
- 5.8 The appointment of the Children's Guardian or CFR ends at the conclusion of the proceedings. The Children's Guardian will ensure that arrangements have been made to inform the child of the court's decision.
- 5.9 At the end of the appointment of the CFR – if there is no appointment of a Guardian – the CFR should write a letter, which can be kept on the court file for the child in the

¹⁶ Section 46 (6) ACA, 2002

interests of his/her later life needs to help explain what happened and why decisions were made about them.¹⁷

¹⁷ For all adoptions on or after 30th December 2005, the adopted adult has a legal right to see the court's records of their adoption including the application form (but not the documents attached to it), the Annex A and Cafcass Report

Guidance for Witnessing Consent to the Making of an Adoption Order (in Partner and other Non-Agency Adoptions)

1.0 Introduction

1.1 This guidance gives an overview of the legal framework for witnessing the consent of parents when an application for an Adoption Order is made by a partner or in any other non-agency adoption application. It does not include [inter-country adoption](#) about which there is separate guidance. 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 these adoptions.

2.0 The legal framework

2.1 For an Adoption Order to be made, every person with parental responsibility must either consent to the adoption or their consent must be dispensed with.

2.2 A non-agency adoption is where the child has not been placed by an adoption agency and cases will include:

- Adoption by the partner of the child's birth or adoptive parent i.e. a step-parent (these 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 which are not supported by the local authority
- Inter-country adoption – please see [Inter-country adoption guidance](#)

3.0 Partner adoption

3.1 The application for an Adoption Order is made by the partner of a parent, the partner must be either: the married spouse, civil partner or a person living with the parent as partners in an enduring family relationship.

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 authority.¹

3.3 The spouse or civil partner of a birth parent can acquire parental responsibility for their partner's child without obtaining an Adoption Order:

- By formal agreement

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.

- By a Parental Responsibility Order under section 4Za and 4A of Children Act 1989
- By a Child Arrangements Order under section 8 of the Children Act 1989 that can last until the child reaches 18² in exceptional circumstances (although this route is rarely chosen).

The local authority and the court will consider whether one of these alternatives is more appropriate and in the best interests of the child.

- 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. Instead, form A107 should be used for the 'continuing parent'.

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.
- 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/ren in a private fostering 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.

² Section 12 Children Act 1989

- 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 proceedings³.
- 5.5 Where the child is made a party to the proceedings, the court may appoint a Children's Guardian.
- 5.6 Where the child is not made party to proceedings, 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.
- 5.7 In adoptions by foster carers the consent of birth parents with parental responsibility and any guardian is given on the prescribed Form A104.

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 16.30 to 16.32 of The Family Procedure Rules 2010.
- 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. It is not necessary for Cafcass to see the child.

Ensuring valid consent

- 6.4 The task of witnessing consent can be a complex task.⁴ The Reporting Officer should be vigilant about factors that might invalidate consent, such as incapacity due to mental ill health or learning disability.
- 6.5 The local authority evidence to the court will indicate to the Reporting Officer whether the parents or guardians have the capacity to consent.

³ Rule 23(2) FPAR 2002

⁴ Rule 16.32 FPR 2010 and Practice Direction 16A

- 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.
- 6.8 On completion of her/his investigations the Reporting officer must:
- Submit a brief report⁵ 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 Hearing

- 6.9 The Reporting Officer must attend directions hearings as directed by the court.⁶

⁵ Rule 16.32 FPR 2010 and Practice Direction 16A

⁶ Rule 16.32 FPR 2010 and Practice Direction 16A

Inter-country Adoption Guidance

1.0 Introduction

- 1.1 There are three categories of inter-country adoption:
- a) Adoption involving a child from a Hague Convention country.
 - b) Overseas adoption (previously designated countries) where an adoption order is recognised in the UK. Cafcass may have a role in these cases.
 - c) Adoption of a child outside those areas and in which the adoption order is not recognised in the UK.

2.0 Legal framework

- 2.1 This is a complex area of law governed by:
- a) The Adoption and Children Act 2002 sections 83 to 91.
 - b) Adoption with foreign element regulations 2005.
 - c) Practice Direction 14B supplementing Rule 14.8(3) of the Family Procedure Rules 2010 which sets out the considerations for the court at the first directions hearing at any application for an adoption with foreign element.
- 2.2 The child will be a party to an adoption application or an application under section 84 of the Adoption and Children Act (an application for parental responsibility by a person who intends to adopt a child outside the British Isles and intends to take the child abroad to do so).
- 2.3 One of the first duties of Cafcass in convention adoptions and adoptions from non-convention or designated countries is to appoint a solicitor, preferably one who is experienced in the area of inter-country adoption. The case is likely to be transferred to the High Court.
- 2.4 Similar restrictions on making an application for adoption orders apply re: Section 49 of the Adoption and Children Act:
- i) It must be made by a couple or a single person.
 - ii) At least one must be domiciled in the British Isles or both (or a single Applicant) must have been habitually resident in British Isles for not less than 1 year.
 - iii) The child must be under 18 at the time of the application.
- 2.5 For an adoption where section 83 of the Adoption and Children Act applies the child must live with one or other of the Applicants preceding the application.

3.0 Convention Adoptions

- 3.1 Where an applicant wishes to adopt a child from a convention country the local authority has a duty to carry out an assessment and there are regulations setting out what enquiries the relevant local authority have to make.
- 3.2 The role of the Central Authority is set out in the regulations which provide certain safeguards to ensure that the child is available for adoption and that the adoption has been approved in the state of origin.
- 3.3 The applicants may adopt the child in the country of origin if it is a Hague Convention country and that adoption order will be recognised in the UK.
- 3.4 If the applicants have not adopted the child in the country of origin, then once the child is brought into the UK they will need to apply to the court for a convention adoption order. To be a convention adoption the Applicant (and both if a couple) must be habitually resident in the British Isles for not less than one year preceding the application and the child has to be habitually resident outside the British Isles.
- 3.5 Before a convention adoption order is made there is a requirement that the child is to live with the adopters and section 42 is amended to say that the requirements are the same as in an agency adoption and the child must live with one or both of the couple or a single Applicant for 10 weeks before the application.
- 3.6 There are various websites listing the countries that have ratified or acceded to the Hague Convention, including www.hcch.net/en/states/hcch-members

4.0 Overseas (or Designated Country) adoptions

- 4.1 An adoption from a designated country (an overseas adoption) will not involve Cafcass as the adoption in the state of origin is recognised in England and Wales.

5.0 Adoption of a Child from Outside Hague and Designated Country and Where Adoption Order is Not Recognised in the UK

- 5.1 If an adoption order is neither made in a Hague Convention country nor in a country which is designated as being recognised then, despite an adoption order having been made in the country of origin, a fresh application will have to be made in the UK for another adoption order.

6.0 Practical tips from Practitioners

- 6.1 Establish the circumstances of the child's entry to the UK:
- The requirements of section 2 of the Adoption and Children Act 2002 (living with the Applicant) and section 49 (criteria for adoption) needs to be met. Check the

paperwork and details relating to the child's entry into the UK to confirm that relevant permissions have been obtained from the home country and The Home Office.

- Confirm the child's status in the UK. The protocol between Cafcass and the UK BA can be used. The court can also make orders to obtain information from the Home Office using its own protocol and Form EX 660. You may need to get written confirmation but no steps will be taken to remove the child pending the outcome of proceedings.
- If there are issues that need to be investigated you may need to secure the child's position by way of interim orders; this must be done without delay.
- Give early consideration as to whether expert evidence is required.
- Inquire with the Local Authority as to whether there is any further relevant information they hold in their files

6.2 There is a need to establish whether the child came into the country and left their own country lawfully:

- There are a number of criminal offences dealing with trafficking of children that may be committed if the relevant permissions are not obtained and there may have been a breach of section 83 of the Adoption and Children Act 2002 and a breach of the requirements under Section 83 is an offence.
- The fact that the child is brought into the country unlawfully does not necessarily mean that the court will not make an adoption order.
- The involvement of the police may have an impact on the timescale.
- If a child is moved away from their home country unlawfully you should try to seek the view of the home country from the High Commission or Embassy as early as possible. In some circumstances the home country may wish to make representations and in extreme circumstances the country may require the return of the child.

6.3 Investigate the circumstances of any adoption order made in the country of origin:

- If the child has been adopted and the adoption order is not recognised then it is important to look at all the paperwork relating to the adoption in the child's home country including any assessments undertaken.
- Documents brought from the home country relating to any adoption should be translated.

6.4 If the birth parents have provided consent in the home country then there will be a need to scrutinise and verify that consent. If there has been no adoption in the home country then efforts will have to be made to locate the birth parents to obtain consent and establish their views. Ensure that they have been personally served with all court papers, and recommend that they seek legal advice about the options available to them.

6.5 Give consideration to the child's background:

- Diversity issues need to be properly considered including issues of culture, ethnicity, religion, language etc. and how these are being managed and addressed by adopters.
 - Enquiries may need to be made as to any familial or indigenous health or medical issues.
- 6.6 Consider how any assessment that needs to be undertaken in another country are to be done. Children and Families Across Borders (CFAB) can do these assessments but there may be issues of timescale and independent professionals locally may be able to assist. See the [Travel Abroad Policy](#) for more information.
- 6.7 External information on inter-country adoption can be seen on the [CoramBAAF](#) website, and the [DfE](#) website ([inter-country adoption information for adoption agencies and adoption statutory guidance 2013](#)).