

ADOPTION

This Leaflet:

- Outlines what adoption is
- Outlines who can adopt and who can be adopted
- Outlines the adoption process

What is adoption?

Adoption is a formal legal process which enables adults who are not the natural parents of a child, to become the child's parents in their place. An Adoption Order is probably the most significant order the family court can make in relation to a child. The relevant Act is the Adoption and Children Act 2002 (ACA).

**5206 ADOPTIONS WERE ENTERED
IN THE ADOPTED CHILDREN
REGISTER FOLLOWING COURT
ORDERS IN ENGLAND AND WALES
DURING 2012, A 9.8% INCREASE**

An Adoption Order gives parental responsibility for a child to the adopters and simultaneously extinguishes parental responsibility which anyone has for the child immediately before the making of the order. It severs the legal ties between a birth parent and the child and although they always remain the child's birth parents, after the order is made, they will no longer be the child's legal parents.

Who can be adopted and who can adopt?

Who can be adopted?

Only a child under the age of 18 years old can be adopted. An application cannot be made in relation to a child who is, or has been married or in a civil partnership. The child must be physically present when the application for an adoption order is made, or habitually resident in England and Wales.

Who can adopt?

A child can be adopted by either a single parent or by a couple. An order can be made in favour of two applicants if they are a married couple, a couple who have entered into a civil partnership or 'two people living as partners in an enduring relationship'.

An application for an adoption order may only be made if; one of the couple is domiciled in a part of the British Isles; or both have been habitually resident in a part of the British Isles for a period of not less than one year ending with the date of application.

Each applicant must be at least 21 years old, except where one is the mother or father of the child, then the parent must be over the age of 18 years. There is no legal upper age limit, but the applicants will be assessed as to their ability to care for the children and age may be a relevant factor.

Where the child has been placed with the prospective adopters by a Local Authority, there is an additional requirement that the child must have had their home with the adopters, or at least one of them, for a specified period between 10 weeks and 3 years, depending on the adopters' connection with the child.

If you wish to adopt a child you will usually need to approach the Local Authority or Adoption Agencies directly and they will consider why you would like to adopt a child and your circumstances generally. If you are adopting through the Local Authority, a social worker will usually be allocated to you, to help explain and support you through the process of adoption. Every Adoption Agency and Local Authority will have their own procedures in place when it comes to adoption, and so it is important that you notify them of your intention as early as possible so that you can ensure that you are provided with their guidance and support at the earliest opportunity.

What is the adoption process?

When a court is invited to make a decision regarding the welfare of a child, the paramount consideration is the child's welfare. The Judge must apply the 'welfare checklist' which can be found in S. 1 ACA, and it is the welfare 'throughout his life' and any delay in coming to the decision is likely to prejudice the child's welfare.

The court and agency must give consideration to all the options available in the child's case and the court must not make any order unless it considers that making an order would be better for the child than not doing so. The range of options in a particular case may include; placement with extended family members or friends, reunification with birth parents, long-term fostering, other accommodation under a care order, or adoption.

The birth parent is an automatic party to the adoption proceedings unless he or she has given notice that they do not wish to be informed of the proceedings. If this is the case they will still be given notice of the final hearing. The respondents will be every person with parental responsibility for the child, any person who is named in a Child Arrangements Order as a person with whom the child is to spend time with, any Local Authority or adoption agency connected with the child's adoption. In some circumstances, the child will be made a party and he or she will normally be represented by a child's guardian and a solicitor for the child will be appointed.

It is a requirement that the court must receive a substantial and comprehensive report upon the child, the natural parents and the adopters before the final hearing can proceed.

If the parent opposes to the making of an adoption order, there will be a final hearing at which the principle issue is likely to be whether or not the parent's consent to adoption should be dispensed with.

Where an adoption order is to be made, the court will usually hold what is called a celebration hearing when adoptive parents and their wider family and the child can attend the court for the adoption certificate to be handed over. Natural parents and family members are not given notice of this hearing so that there is no risk of disruption or upset for the child.

Parental consent

When a court is making a decision about whether to grant a local authority a placement order it must consider parental consent, and again when the court comes to consider whether or not to make a final adoption order. Any consent given less than six weeks after the child's birth by a mother is not effective.

A parent who consents to the child being placed for adoption may, at the same time or later, consent to the making of a future adoption order. Prior consent may be withdrawn but it will be ineffective if withdrawn after an adoption application has been made. If the consent has not been withdrawn prior to the issue of an adoption application, the birth parent may only oppose the making of an adoption order with the leave of the court, and the court may only give leave if there has been a change of circumstances.

An adoption order may only be made if the court is satisfied; that the parent unconditionally consents to the making of an adoption order and with full understanding of what is involved; or that the parent had given advance consent to adoption (and has not withdrawn it) and does not oppose the making of the adoption order, or that the parent or guardian's consent should be dispensed with.

Dispensing with consent

A court may dispense with consent of a parent or guardian to adoption or to a placement order on one or both of two possible grounds: the parent or guardian cannot be found or lacks capacity to give consent; or the welfare of the child requires the consent to be dispensed with.

Contact after Adoption

Usually there is a 'Goodbye Contact' and then subsequent letterbox contact. Letterbox contact is where the child receives a letter from the biological family once or twice a year, although this varies depending on the circumstances. A recent change in the law means that certain individuals can apply for an order for contact with the child, including staying contact, and the application can be made after the adoption order is made. They must first obtain the leave of the Court to make that application.

Step-Parents

A child's step parent may make an application for an adoption order either on his own or as one of a married or unmarried couple. However, there are alternative methods for step-parents to acquire parental responsibility for the child and to formalise their parenting role, without extinguishing the birth father's rights. This could be by way of a parental responsibility agreement or order. If you wish to adopt your step-child you are required to give your Local Authority at least three months notice of your intention to apply for an order, during which time they will assess you. They will prepare a report and this will make recommendations to the court. There will of course, in most cases be the issue of the birth parent's consent.

Revocation

Adoption orders are final and cannot be revoked. There is one exception; when a child is adopted by one natural parent as the sole adoptive parent and then the child is legitimised by the marriage of their natural parents. Either parent can then apply to revoke the adoption order.

TV Edwards are happy to offer legal advice and guidance to assist you through what can be a complex and emotionally challenging process. Please do not hesitate to contact us for further information about our team of experts who will be happy to discuss the options available to you.

TV Edwards LLP

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Please feel free to contact us on the following:

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