

Adoption and Surrogacy Handbook

This document contains the full range of Cafcass guidance on adoption and surrogacy, 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 which can be accessed [here](#))
- Inter-country Adoption Guidance
- Guidance for Parental Order Reporters
- Guidance on Donor Assisted Conception

The guidance documents set out the legal framework and the role and duties of the Children’s Guardian/Reporting Officer/Parental Order Reporter 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 and surrogacy cases can be accessed through word or ECF. 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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This guidance explains the legal framework for adoption 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).

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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 in partner and other non-agency adoptions.

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Good Practice Guidance for Adoption Agencies and Cafcass: Children Relinquished for Adoption

The purpose of this guidance is to inform local authority/voluntary adoption agencies and Cafcass staff of best practice in cases involving children relinquished for adoption. Please [click here](#) or on the title above to open this stand-alone document.

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Adoption - Which form do I use?

1.0 Where to find adoption forms

- 1.1 Forms with the title A100, A102 etc. are Cafcass adaptations of HM Courts and Tribunal Service forms, also available [here](#) or by clicking the links provided. Either type of form may be used, however, only Cafcass forms allow text to be typed/entered electronically.
- 1.2 Cafcass templates can be accessed via Microsoft Word, 'New' template and selecting the 'Public Law' tab and through ECF.

2.0 Adoption queries

- 2.1 For any queries relating to individual cases, please contact Cafcass Legal on 0844 353 3392.

HMCTS reference	Template title in Microsoft Word	Full title	When to use it
A100	Consent Any Prospective Adopters 251111	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 251111	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 251111	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 251111	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 251111	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 treated as the parent and will have no rights in respect of the child. Instead see Form A107 below for partner adoptions.
A105	Consent Order Section 84 25111	Consent to the making of an Order under Section 84 of the Adoption and Children Act 2002	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. A section 84 order confers parental responsibility upon persons who intend to adopt a child outside the British Isles (inter-country adoptions). An application for a section 84 order must be made to the High Court.
A106	Withdrawal of Consent 251111	Withdrawal of Consent Sections 19 and 20 of the Adoption and Children Act 2002	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. 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.
A107	Consent for partner adoption 251111	Consent by the child's parent to adoption by their partner The Adoption and Children Act 2002	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. 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 but the person is not the child's parent. A person who has entered into a civil partnership can be a "step parent".'
N/A (Cafcass form available via Word templates or ECF)	Statement Not to be Notified of Adoption 251111	Statement That I Do Not Wish to be Notified of the Application for an Adoption Order for my Child Section 20 (4) Adoption and Children Act 2002	This form should be used when, after giving advance consent to adoption, a parent or guardian would like to make a statement that they do not wish to be notified of an application for an adoption order. Without completing this form the parent or guardian must otherwise be notified of the date and venue of the adoption order application.

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 Guidance for witnessing parental consent to placement of children relinquished for adoption is the subject of a separate set of joint guidance. There is also separate guidance for Adoption Order proceedings.

2.0 The Legal Framework

Parents and Guardians

- 2.1 The term 'parent' in this guidance refers to parents with parental responsibility for the child. The term 'guardian' includes section 5 Children Act 1989 guardians or testamentary guardians (appointed after a parent's death), special guardians of the child; and those in a foreign jurisdiction who have similar duties in respect of the child.

Authorisation to Place for Adoption

- 2.2 A local authority cannot place a child for adoption without authorisation by one of the following routes:
- Consent to placement by each parent with parental responsibility and guardian¹;
or,
 - The granting of a Placement Order²; or,
 - The child is the subject of a Freeing Order³. (If a child has been freed for adoption under the Adoption Act 1976 this guidance is not applicable).

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 harm⁴;
or,

¹ Section 19 ACA 2002

² Section 21 ACA 2002

³ Section 19 Adoption Act 1976

- 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
 - 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.

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 will usually appoint the existing Children's Guardian to act as a Reporting Officer (after the care order has been granted⁵) to witness their consent. 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

⁴ The threshold conditions met under S31(2) of the Children Act 1989

⁵ Consent given under Section 19 to the placing of a child for adoption by a parent or guardian is not effective if it is given during the course of care proceedings. Therefore, obtaining consent during care proceedings does not provide the local authority with the right to place a child for adoption. If the local authority is satisfied that the child ought to be placed for adoption it must apply for a Placement 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 will appoint the Children's Guardian as a Reporting Officer to witness their consent⁶. The local authority can choose to rely on consent given under s19 as authority to place the child for adoption. However, early indications suggest that the local authority is more likely to decide to pursue the application for a Placement Order as this would prevent the need to recommence proceedings if consent is withdrawn.

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

If a child is accommodated at the request of parents⁷ and the local authority decides the child should be placed for adoption, each parent and guardian must give consent⁸ 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 no Placement Order has been made, parents or guardians who have given consent to placement can withdraw their consent up until the adoption order is applied for and the child will be returned to their care within a specified period of time. This will be 7 days if the child has not been placed for adoption, 14 days if the child is already placed. In such circumstances the local authority must then apply for a Placement Order if the grounds (set out in paragraph 2.3) are satisfied.

3.0 The Children's Guardian Role in Placement Proceedings

- 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)⁹.
- 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 consent of parents and guardians on the grounds set out in 2.3(d).
- 3.4 The local authority is not required to satisfy the court as to the likelihood of placement when applying for a Placement Order. Therefore, the local authority is not required to have identified a particular family for a child, taken a 'match' to adoption panel, or to provide 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.

⁶ Section 19

⁷ Section 20 Children Act 1989

⁸ Section 19

⁹ Rule 16.3 FPR 2010

Duties

- 3.5 In safeguarding the interests of the child, the Children's Guardian must appoint a solicitor for the child (unless a solicitor has already been appointed) and investigate as s/he thinks appropriate or as the court directs. In particular the Children's Guardian must:
- Give advice to the child as appropriate to her/his age and understanding; and,
 - Contact and/or try to interview appropriate people involved in the child's life;
 - Seek appropriate professional assistance where necessary;
 - Write a report to court drawing attention to any issues which will be of assistance to the court in considering the application. Although this may be a brief report, it differs from the report in the care proceedings because it must address the Adoption and Children Act 2002 welfare checklist. The reports will be separate unless the court has made a direction that the two reports be combined. 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 known to the parents.
- 3.6 The Children's Guardian or the solicitor appointed for the child must attend all directions hearings unless the court directs otherwise¹⁰.

The Role of the Children's Guardian

- 3.7 The role of the Children's Guardian in safeguarding the child's welfare in placement proceedings is to address the Adoption and Children Act 2002 welfare checklist; and to consider whether the option being recommended to court (placement for adoption) appears to be most likely to secure the welfare of the child in light of full consideration of all the alternatives and circumstances. Refer to the appendix 2 of this guidance for a useful "walkthrough" of the welfare checklist¹¹.
- 3.8 The Children's Guardian will also assist the court in deciding if the welfare of the child requires the court to dispense with the parents' or guardians' consent to placement. However, it is for the court to decide if the child should be placed for adoption and whether to grant or refuse the Placement Order.
- 3.9 A Placement Order hearing is not a re-run of the care proceedings. Where the 'significant harm' conditions¹² have been proved in earlier care proceedings the first requirement of the grounds for a placement order has already been satisfied.

¹⁰ Paragraph 6.5 of Practice Direction 16A

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

¹² Section 31(2) Children Act 1989

- 3.10 It is not the role of the court or the Children's Guardian to be involved in choosing the adoptive family in placement proceedings. However, the Children's Guardian should ensure that care proceedings are used to good effect by including consideration of what characteristics of a future placement will offer the optimum chances for a good outcome for the child and ensure this analysis is included in the care plan. The local authority will need leave of court to advertise a child for adoption before the Placement Order is granted.

Contact

- 3.11 The Adoption Agency regulations¹³ 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. 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 contact arrangements which are in the interests of the child for the duration of the Placement Order, including whether Section 26 Contact Orders should be made.
- 3.12 Consideration of the child's needs, wishes and feelings in relation to contact after the Placement Order may help the court when it is considering the subsequent adoption order application and whether the child should be made a party to the proceedings. The use of the My Needs, Wishes and Feelings pack may be a useful tool for this purpose.

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).
 - 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 section 26 Contact Order (Adoption and Children Act 2002) can be made.

Revocation of Placement Orders

- 3.14 The process for revoking placement orders is as follows:

¹³ Regulation 46 of the Adoption Regulations 2005

- 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 leave of court**. The criteria for leave are a change in circumstances since the placement order was made.
- c) A leave application can consider welfare issues and a Children's Guardian can be appointed at the discretion of the court.
- d) An application to revoke a placement order is specified proceedings and a Children's Guardian will 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. Plans should also be made to say goodbye to the child and, if appropriate, 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 to ensure that the court care plan and any other key information is communicated to inform their monitoring of the implementation of the care plan.
- 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 developments¹⁴. For further information about the role of an IRO refer to: Guidance for Independent Reviewing Officers in [Cafcass IRO Practice Note](#).

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

¹⁴ Regulation 36 of the Adoption Agencies Regulation 2005

- 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. One person 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 appoint a second Reporting Officer to visit that parent.
- 4.2 The appointment and 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.

Duties

- 4.3 When witnessing consent during placement proceedings 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). Form A100 is used for consent to placement for adoption with any prospective adopters chosen by the agency. (A parent or guardian giving consent to placement in placement proceedings may only consent to placement with any adopters chosen by the agency.)
- 4.4 When section 20 consent 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 ECF, 'Statement that I do not wish to be notified of adoption s20' may be used.
- 4.5 The role of the Reporting Officer is to ensure that the parent or guardian of the child are fully aware of the implications of adoption and their consent to placement for adoption is given unconditionally and with a full understanding of the nature and effect of their consent.
- 4.6 The Reporting Officer should investigate all the circumstances relevant to the parent or guardian's consent to placing the child for adoption. On receiving the Local Authority Annex B Report the Reporting Officer should allow sufficient time to read the documentation.

Ensuring informed consent

- 4.7 The consent to placement for adoption forms were not designed for parents and guardians of children subject to ongoing care proceedings. The local authority cannot rely on parents' consent to placement under section 19 during care proceedings and if the plan is for adoption the local authority would be expected to make an application for a placement order. If the parents then decide to consent they would be consenting to the making of a Placement Order. The main use of the consent to placement for adoption forms is for parents relinquishing children for adoption. The legal consequences of giving consent to a Placement Order are set out at 2.3 of this guidance and an amended consent form (for parents giving consent to placement

where the child is the subject of a Care Order) is provided in appendix 1 to this guidance.

- 4.8 A Reporting Officer is appointed on an application for a Placement Order to obtain consent of the parents to the actual Order and not the placement itself. The Reporting Officer will have to amend the explanation of the legal consequences of consenting to an order rather than consenting to a placement. The parent needs to have a clear understanding of the legal consequences when signing their consent and therefore should take legal advice before signing.
- 4.9 If a parent fails to attend the first appointment then 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. 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 transferred up.
- 4.11 The Reporting Officer must also make sure that the parents or guardians have 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.

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

- 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 The Family Procedure Rules 2010 set out the procedures where the birth mother or father is under the age of 18 and wishes to be involved in the placement proceedings¹⁶. The starting position is that they must have a Litigation Friend to conduct proceedings on their behalf, but¹⁷ they may conduct proceedings without a Litigation Friend where they have obtained the court's permission to do so or if a solicitor deems them competent to give instructions.
- 4.16 In the case of a minor parent the court may appoint as Litigation Friend, if they consent:
- a) The Official Solicitor who should be approached first (practice note from Official Solicitor 2 April 2001);
 - b) An Officer of the Service (note that Cafcass has to consent and consent would not be forthcoming unless the officer already acts as children's guardian of the child as a child subject in concurrent children proceedings¹⁸); or
 - c) Some other person.
- 4.17 When a child reaches the age of 18 a Litigation Friend's appointment comes to an end, even if the proceedings continue.

The Legal Consequences of Giving Section 19 Consent to Placement in Placement Proceedings

- 4.18 The legal consequences of giving section 19 consent are as follows:

¹⁶ Rule 16.5 and Chapter 5 of Part 16, FPR 2010

¹⁷ Rule 16.6 FRP 2010

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

- a) The local authority shares parental responsibility with the parents and guardians 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 (section 26 ACA 2002).
- c) The parents or guardians can withdraw consent at any time up until the adoption order is applied for. If there is no care order, the local authority is then obliged to return the child to the parents if they request it (within 7 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 section 19 consent 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 the court's leave.

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 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 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 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 of age, and background may carry particular weight. Consideration such as special

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

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 life long 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 Order proceedings. Guidance on inter-country adoption is available [here](#).
- 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) or local authority and place it with the adopters.
- 2.3 The making of an Adoption Order extinguishes any Children Act 1989 Order in place at the time, although new section 8 contact orders can be made at the same time as the adoption order. 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 only oppose the making of an Adoption Order with the leave of court. Leave

¹ Section 19 Consent

will only be granted if the court is satisfied that there has been a change in circumstances that justify leave being given in the interests of the child.

- 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 and does not oppose the making of the Adoption Order²; or
 - 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 for³; 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.
- c) The child is free for adoption.
- 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 adopter(s)⁴. These visits are part of the investigation leading to the local authority Annex A court report⁵.

Timing of the Application for an Adoption Order

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

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

- 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 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 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:
- 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 5 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 Outcomes of an Adoption Order Application

- 2.16 The potential options for non-agency adoptions are:
- a) An Adoption Order places parental responsibility (PR) solely with the adopters and ends the PR of the birth parents - creating a lifelong legal relationship between the adopters and the child
 - b) The alternatives to adoption for spouses or civil partners of birth parents are:
 - A Parental Responsibility Agreement⁶; or,
 - A Parental Responsibility Order⁷.
 - c) The alternative for partners who are not married to or civil partners of the birth parent is a Residence Order - lasting until the child is 16 or 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 PR, but the Residence Order determines with whom the child lives.
 - d) The partner of a birth parent can only apply for a Special Guardianship Order if leave of court is given (although special guardianship is not likely to be an alternative to adoption for most partner adoptions).

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

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

- 2.17 In the case of other relatives such as grandparents or non-related prospective adopters such as foster carers the alternatives to adoption are;
- a) A Residence Order (for details see 2.16), or
 - b) A Special Guardianship Order. The special guardians share PR with the birth parents and guardians and the order lasts until 18 unless it is discharged. The special guardians can exercise PR to the exclusion of parents and guardians on most issues.
- 2.18 The potential orders for children placed by local authorities (subject to Placement Orders or section 19 consent) are:
- a) An Adoption Order (for detail 2.16)
 - b) A Special Guardianship Order (for detail see 2.16)
 - c) A Residence Order (for detail see 2.16)
 - d) Revocation of the Placement Order - any Care Order made prior to the Placement Order will revive, and allows PR to be shared by the birth parent(s) and the local authority until the child is 18 or the order is discharged. If the court refuses an application for an Adoption Order it can also revoke the Placement Order.
- 2.19 The child's wishes and feelings are integral to any decisions and must inform the plans for the future. 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. 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 well being.

The Court

- 2.20 Prospective adopters can make their application to any court - it is not necessary to apply to the court which granted any previous orders. An application for an Adoption Order can be made to any court.

The Legal Effect of the Application

- 2.21 The application prevents an accommodated child being removed 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.

The Child as a Party

2.22 Unlike in Placement Order proceedings, a child is not automatically a party to Adoption Order proceedings. The court rules provide that the child will be party when⁸:

- 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.

3.0 The Role of the Children's Guardian in Adoption Order Proceedings

3.1 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.

3.2 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 child⁹.

3.3 At any stage in proceedings, the court can decide to join the child as a party and appoint a Children's Guardian.

3.4 When appointing a Guardian the court will usually request the appointment of the same Children's Guardian who was previously appointed for the child.

The Duties

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
- 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

⁸ Rule 14.3 FPR 2010

⁹ Rule 6.23 and Rule 14.5 FPR 2010

- 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. The Children's Guardian must advise the court as to whether in the interests of the child, any contact arrangements should be considered, including in some cases no arrangements for contact. The Guardian should highlight for the court any existing or proposed arrangements so that the court hears the child's views about her/his future contact needs¹⁰.
- 3.8 Post adoption contact can take the form of:
- **Indirect contact** - exchange of information, such as photographs or letters, 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 a Section 8 order for both direct and indirect contact.
- 3.9 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.

¹⁰ Section 46 (6) ACA 2002

Other Potential Parties

- 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.

Adoption Support

- 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 has an important role to play in checking 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](#).

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

¹¹ Rule 14.3 FPR 2010

¹² Practice Direction 16A

- 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 as 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 Although any report in adoption proceedings cannot be disclosed, even to other parties without the permission of the court¹⁴. 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.
- 3.19 It is good practice at the final hearing, for the Children's Guardian to write a letter, which can be kept on the court file for the child in the interests of his/her later life needs¹⁵.

Communicating the Court's Decision to the Child

- 3.20 The Children's Guardian will ensure that planning has been made to inform the child of the court's decision and the outcome of that decision for his/her life is explained to

¹³ Rule 14.16 FRP 2010

¹⁴ Rule 77

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

the child. This last meeting between the Children's Guardian and the child also gives the child opportunity to have closure and say goodbye.

4.0 Role and Duties of the Child and Family Reporter in Adoption Proceedings

4.1 The role and duties of the Children and Family Reporter in adoption proceedings are set out in Rule 16.33 FPR 2010 and Practice Direction 16A.

Appointment of a Child and Family Reporter

4.2 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 Order proceedings. As the child is not a party, the CFR does not appoint a solicitor for the child.

The Duties

4.3 The duties of the CFR are very similar to those of the Children's Guardian and must include considerations 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.

The Role of the Child and Family Reporter

4.4 The role of the CFR is to safeguard the welfare of the child in adoption proceedings through the investigation of the specific welfare issues considering the impact of future plans for the child.

4.5 The CFR will 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.

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 Application for a Section 84 Order

- 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.

6.0 The Children's Guardian Role in Section 84 Proceedings

- 6.1 The role and duties are the same as in Adoption Order proceedings; refer to detailed guidance at 3.5 & 3.6 of this guidance.
- 6.2 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 proceedings¹⁶.
- 6.3 Contact arrangements might be similar to those proposed in adoption application refer to further guidance at 3.7 – 3.9.
- 6.4 The appointment of the Children's Guardian or CFR ends at the conclusion of the proceedings. The Children's Guardian will make arrangements to inform the child of the outcome and say goodbye to the child.
- 6.5 It is good practice that at the end of the appointment of the CFR – if there is no appointment of a Guardian – for the CFR to write a letter, which can be kept on the court file for the child in the interests of his/her later life needs¹⁷.

¹⁶ Section 46 (6) ACA, 2002

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 partners and all other types of non-agency adoptions, except inter-country adoption for which there is separate guidance [here](#), 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 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 The categories of non-agency adoptions are:

- Adoption by the partner of the child's birth or adoptive parent (i.e. a step-parent) 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 – 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 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

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.

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 (although this route is rarely chosen).

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. 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 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.

² Section 12 Children Act 1989

- 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 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 task⁴. The Reporting Officer should be vigilant about factors that that might invalidate consent, such as incapacity due to mental ill health or learning disability.

³ Rule 23(2) FPAR 2002

- 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.
- 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 all directions hearings unless the court directs otherwise⁶.

⁴ Rule 16.32 FPR 2010 and Practice Direction 16A

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 has no 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 www.ukvisas.gov.uk.

5.0 Overseas (or Designated Country) Adoptions

- 5.1 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.

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

- 6.1 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.

7.0 Practical Tips from Practitioners

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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 efforts have to be made to establish the view of the birth parents.
- 7.5 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.
- 7.6 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 [Casework Abroad Policy](#) for more information.

- 7.7 The ACA Training Practitioner Workbook sets out the duties, responsibilities and processes re: inter-country adoption. [BAAF](#) has some useful information which can be looked at on their website. The [DfE](#) website also contains some information about inter-country adoption.

Guidance for Parental Order Reporters

1.0 Introduction

1.1 This guidance sets out the key background information to support Cafcass officers acting as Parental Order Reporters in cases where applications for Parental Orders have been made. This includes:

- The legislative framework and process for surrogacy in the UK
- The Parental Order Reporter roles and responsibilities

1.2 You may also wish to read the Cafcass [Guidance on Donor Assisted Conception](#) section of this Handbook, which sets out the legislative framework for medical treatments in the UK, birth registration and the issues that may be encountered in Cafcass cases relating to donor assisted conception.

2.0 Definitions

2.1 **Surrogacy** – as defined in The Surrogacy Arrangements Act 1985⁴⁴

'Surrogate mother' means a woman who carries a child in pursuance of an arrangement—

(a) made before she began to carry the child, and

(b) made with a view to any child carried in pursuance of it being handed over to, and parental responsibility being met (so far as practicable) by, another person or other persons.

2.2 **Parental Orders** – as defined in The Human Fertilisation and Embryology Act 2008 (HFEA)⁴⁵: The court may make an order providing for a child to be treated in law as the child of the applicants provided that certain conditions are satisfied.

2.3 **Parental Order Reporter (POR)** – is the Cafcass officer appointed to advise the court in Parental Orders.

3.0 Legislation

3.1 In summary⁴⁶:

- To acquire the status of legal parents the commissioning couple must apply for a Parental Order in the Family Proceedings Courts.
- The Court will appoint a Cafcass officer to act as Parental Order Reporter.

⁴⁴ [The Surrogacy Arrangements Act 1985](#)

⁴⁵ [Section 33, Human Fertilisation and Embryology Act 2008](#)

⁴⁶ [Family Proceedings \(Amendment\)\(No 2\) Rules 2010](#)

4.0 **Background**

4.1 Surrogacy provides an opportunity for a couple to have a child that is genetically related to either one or both of them where this would otherwise not be possible. The order can only be made by consent and if consent isn't forthcoming, please seek legal advice from Cafcass Legal (0844 353 3392).

4.2 There are two types of surrogacy:

- **'traditional' or 'genetic' surrogacy** where the intended father's sperm and the surrogate's eggs; and
- **'host' or 'gestational' surrogacy** where the surrogate's eggs are not used. This includes variations such as the intended mother's egg being fertilised by a sperm donor and carried by the surrogate or a donor's egg being fertilised by the intended father's sperm and carried by the surrogate.

4.3 Surrogacy can be arranged through established clinics or through informal means. (See 6(g) for more specific information on overseas arrangements).

4.4 In the UK, the woman who carries and gives birth to a child is always the child's legal mother and will have parental responsibility for the child.⁴⁷

4.5 In most cases, there are three potential Parental Responsibility (PR) issues to be aware of:

- A male commissioning parent may, as the biological father, have registered the birth together with the surrogate as the child's father and therefore have PR for the child.⁴⁸
- If the surrogate is married or in a civil partnership, the surrogate's husband or civil partner will be the father or second parent of the child and hold PR for the child.
- The child may have no second parent.

Please note that the concept of legal parenthood is different to that of PR. If in doubt of anything please seek advice from Cafcass legal (0844 353 3392)

4.6 The Court Rules specify who will be the parties to the case. The applicants are the commissioning couple and the respondents will be the surrogate, the other parent if there is one (this may be the surrogate's husband or civil partner) and any other person with parental responsibility for the child at the date of the application. Depending on the complexity of the case, the POR may need to consider whether the child should be joined as a party.

⁴⁷ [Section 33, Human Fertilisation and Embryology Act 2008](#)

⁴⁸ Register of live births – held by the General Register Office

- 4.7 The applicants must be a husband and wife, civil partners or a couple in an enduring family relationship and they must complete an application for a Parental Order (form C51). A copy of the child's birth certificate will be attached to the form, alongside a copy of the commissioning couple's marriage or civil partnership certificate (where applicable).
- 4.8 Once the court receives the completed application form, a request will be made to Cafcass for the nomination of a Family Court Adviser to act in the role of a POR.

5.0 Duties of the Parental Order Reporter

- 5.1 The duties of the Parental Order Reporter include those listed in Practice Directions 16A of the FPR 2010 (10.1),⁴⁹ and the applicable legislation (Children Act 1989 and HFEA 2008⁵⁰).
- 5.2 It is the responsibility of the POR to provide a report to the court which will assess whether the s.54 of the HFEA 2008 criteria are met (outlined below) the welfare checklist and any other matters.
- 5.3 The Parental Order Reporter should make a professional judgement as to the need to undertake safeguarding checks with the police and local authorities. The consent of the parties is required to undertake such checks.
- 5.3 The parental order reporter must make such investigations as are necessary to carry out the parental order reporter's duties and must, in particular:
- (a) contact or seek to interview such persons as the parental order reporter thinks appropriate or as the court directs; and
 - (b) obtain such professional assistance as is available which the parental order reporter thinks appropriate or which the court directs be obtained.

6.0 Application Criteria (s54 of The Human Fertilisation and Embryology Act 2008)

- a) **The child is carried by a surrogate who is not the wife of the applicant after the placing in her of an embryo or sperm and eggs or artificial insemination.** If a HFEA licensed clinic was used the POR should seek information about the arrangement either from applicants or directly from the clinic. If alternative arrangements were used (overseas clinics or without medical intervention) the POR should make enquiries into the circumstances of the child's conception.
- b) **At least one or both of the applicants are genetically related to the child.** The POR should consider whether a DNA test will be necessary.
- c) **The applicants must be husband and wife, civil partners or two people in an enduring family relationship.**

⁴⁹ [Family Procedure rules, practice direction 16A \(10.1\)](#)

⁵⁰ [Section 54 of the Human Fertilisation and Embryology Act 2008](#)

- d) **The application must be made within 6 months of the child's birth.**
- e) **The child's home is with the applicants and one or both of them are domiciled in the UK.** This is characterised by where the applicants have their permanent home and to which, when they are absent, they always have the intention of returning.
- f) **Both applicants must be over 18 years of age.**
- g) **The surrogate and her partner/husband must consent freely and unconditionally to the order.** For domestic cases, the POR should consider whether they need to meet the surrogate. The POR can record the surrogate's consent by witnessing the surrogate sign the A101A form. The surrogate's consent is only valid 6 weeks **after** the birth of the child. The surrogate may want to attend court. For international cases, the POR cannot obtain the surrogate's consent if she is outside of the UK and may have to rely on the document provided by the applicant or obtain a witness to consent out of jurisdiction. Please note that cases involving a surrogate overseas will be transferred to the High Court.
- h) **The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants.** The POR must request/expect to be given details of **all** monies paid by the **applicants in consideration of the making of the order, the handing over of the child, the obtaining of consent and the making of arrangements in advance of the application** . Payments made that aren't reasonable expenses can be authorised by the court under sec 54 (8) and payments made to international agencies are likely to be approved, as well as other payments made, provided they are not unlawful in the country where they were made.

If in doubt about any of the above please contact Cafcass Legal and/or present your concerns to the court.

7.0 The Welfare of the Child, the Paramountcy Principle, and the Welfare Checklist

- 7.1 The welfare of the child is the Court's paramount consideration in Parental Order applications. The applicable welfare checklist from the Adoption and Children Act 2002 needs to be considered.⁵¹

8.0 The Disclosure of the Parental Order Report

- 8.1 The report of the Parental Order Reporter is confidential and cannot be shared with the parties unless a direction is sought from the court for the report to be disclosed.

⁵¹ [Welfare Checklist, Section 1, Adoption and Children Act 2002](#)

Guidance on Donor Assisted Conception

1.0 Introduction

1.1 This guidance sets out the key background information to support practitioners working in a case where donor assisted conception is a factor. This includes:

- The legislative framework for medical treatments in the UK;
- Birth registration in cases; and
- The issues that may be encountered in Cafcass cases.

1.2 It is designed to complement the Cafcass Parental Order Guidance, which sets out the process for surrogacy in the UK, the Parental Order Reporter roles and responsibilities.

2.0 Legislation

2.1 [The Human Fertilisation and Embryology Acts of 1990 and 2008](#) provide the legislative framework for medical treatments carried out in the UK. Donor conceived people who were born before the first legislation came in (August 1991) do not have the legal right to information about their genetic parent(s) and there is no legal requirement for any records to be kept.⁵²

2.2 The Human Fertilisation and Embryology Authority (HFEA) holds a central Register of Information, which includes details of all donations, licensed fertility treatments and subsequent births. Fertility clinics are required to submit a registration form which includes the name, place and date of birth of the donor, specified physical characteristics and medical history (including family medical history where known) together with their ethnicity, religion, marital status, occupation and interests. Donors also have the option to include a pen picture of themselves, the reasons that they donated, and a goodwill message to be passed on to anyone conceived. Parents have the right to some non-identifying information about the donor to aid them in raising their child. This is available either from the clinic where they were treated or from the HFEA.

2.3 All donor-conceived people born from donors who were recruited after 1st April 2005 have the right to apply for identifying information about their donor(s) once they reach the age of 18.⁵³ New rules regarding access to information were introduced as part of

⁵² For this group, accessing information about origins is highly problematic, although the Department of Health has been funding a voluntary information exchange and contact register, UK DonorLink, since 2004, that uses DNA testing as the route to identifying genetic relatives (www.ukdonorlink.org.uk).

⁵³ A small number of donor conceived people were affected adversely by transition arrangements. All donors recruited for the first time after 1.4.05 were required to be identifiable but a small number of treatments were approved using past donations, for example to complete a family using the same donor.

the HFE Act 2008, which came into force in October 2009. The register can now provide information for the following donor-conceived people:

- Those aged at least 16 requesting non-identifying information about (i) their donor(s) and / or (ii) donor-conceived genetic siblings.
- Those aged at least 16 intending to marry, enter into a civil partnership, or enter into an intimate physical relationship who submit a joint application to establish whether they are genetically related.
- Those aged 18 or above requesting identifying information about (i) their donor(s) and / or (ii) donor-conceived genetic siblings. If they were born before the new rules on anonymity were introduced in 2005, identifying information about their donor(s) will only be released if s/he has re-registered as 'willing to be identified'. Identifying information on siblings will only be released with the consent of both parties.

2.4 Where treatment takes place in an overseas clinic, this is subject to regulatory requirements of that country, if any. Where non-medical private arrangements are made (involving self insemination with sperm) such arrangements are legal but unregulated.

2.5 Donors can either be 'known' to the prospective parent(s) – such as a family member or friend – or unknown. Currently no more than 10 families can be formed through the use of one donor (i.e. the number of children may be greater if twins or triplets were born) though this does not include any children born to the donor outside of licensed treatments.

3.0 Background

3.1 Each year approximately 1500 children are born as a result of treatment at licensed fertility clinics in the UK that involve the use of donor assisted conception using sperm, egg or embryos. In addition, some children are born following such treatment overseas, or as a result of sperm donation through private non-medical arrangements.

3.2 Cafcass does not have a statutory role in relation to donor assisted conception independently, except where it involves surrogacy (for further information, refer to Cafcass guidance on Parental Order Reporters).

3.3 Although there are similarities to adoption in that one or both parents of donor conceived children may not be the genetic parent of the child, the assessment and preparation of prospective parents is very different across the two systems.

3.4 Fertility clinics are required by law to take into account the welfare of any child to be born as a result of, or affected by, the proposed medical treatment, including the need for supportive parenting⁵⁴. This includes assessing whether or not there is a risk

⁵⁴ Refer to Section 13 (5) of the Human Fertilisation and Embryology Act 1990 (as amended by the 2008 act) which relates to welfare of the child (<http://www.hfea.gov.uk/5473.html>)

of significant harm or neglect; where they consider that there may be a risk they are required to seek further information before deciding whether or not to proceed.

- 3.5 It is the responsibility of the clinic to consider factors such as:
- Past or current circumstances of the prospective parent(s) that may lead to any child born, or affected, experiencing serious physical or psychological harm or neglect; or
 - Past or current circumstances of the prospective parent(s) that may lead to an inability to care throughout childhood for any child who may be born, or that are already seriously impairing the care of any existing child of a family.
- 3.6 There is no longer a requirement for clinics to routinely check with GPs as to whether they are aware of any risk factors. However, they are required to take a medical and social history and seek further information from relevant agencies if there are concerns regarding the welfare of a child. Where prospective parents refuse permission for any further checks to be completed, treatment can still go ahead if the clinic believes that this will not lead to significant harm or neglect to any child born or affected.
- 3.7 There is no legal obligation for prospective parents of donor conceived children to attend any form of preparation or information sessions prior to treatment. Clinics must offer counselling, and some specify attendance as a condition of treatment, although this may only be one session and may incur a charge. There is no requirement on clinics to provide follow-up support once the child is born.
- 3.8 This means that many parents have had limited opportunity to discuss with a professional the additional issues and tasks that they may encounter in bringing up a child who is not genetically related to either or both of them.

4.0 Birth Registration

- 4.1 The Register of Births can hold records that do not reflect genetic parentage: there is no longer a presumption that the person shown as a parent on the Register is genetically related to the child. Children born as a result of sperm donation have typically been registered as the child of their mother's husband (although this was not legal until recently) and will have assumed that he is their biological father unless told otherwise. Children born from egg donation are registered as the child of the birth mother. Children born as a result of embryo donation are typically registered as the child of their 'social' parents. In no such cases does the birth certificate give any indication that they are donor conceived, meaning that the child neither knows they are donor conceived nor which parent (if any) is their genetic parent unless told. Children conceived after April 2009 may be registered as having a mother and a second female parent and from 2010 two men may be registered as the parents of a child born through surrogacy. Children registered as having two same sex parents will, of course, know that at least one of them cannot be their genetic parent but will be reliant on their parents to give them more information until they reach the age of 18 (see above).

5.0 Issues that may be encountered

5.1 When meeting parents of children born as a result of donor assisted conception, and the child themselves, the practitioner may encounter a number of issues that will need to be fully considered when preparing reports. They may find it useful when doing so to refer to the [Messages from Research](#) document available via the intranet. Below are some illustrative examples of how donor conception could be a matter to be taken account of in Cafcass cases:

- In an adoption application (for example step parent application or application to become adoptive parents) parents may already have a child that was born as a result of donor assisted conceptions whom they have not yet told of his/her donor conceived status. This may need addressing for the well-being of the child/ren concerned. Additionally, the parents' lack of understanding of the importance of children being aware of their origins will need careful attention as part of the adoption application. Where parents have shared information with friends or family there may also be a risk of accidental disclosure by a third party. Further, in some cases the donor may be known to the parents and this can bring particular challenges if the biological and social relationships have not been well managed following the child's birth and/or where the nature of the relationship is not clear to the child.
- Parents who separate may have children born through donor conception treatment. Any disagreements about openness with the child or any unresolved feelings about their use of a donor or about their (in)fertility may be an important factor to consider in seeking a way forward.
- Sometimes, a child may not have the same ethnic background as one of their 'biological' parents. The importance of promoting identity is essential. For donor conceived children this takes on a particular importance because of the added dimension of their genetic inheritance as part of their identity.
- Where more than one child in a family is donor conceived, they may have different access rights to information about their origins, whether in the UK or overseas, depending on the legislative framework in force at the time of their conception.
- Given that some congenital conditions may not present until later in life, those affected (including parents) need to be aware of the possible need for future information sharing including via the HFEA or UK DonorLink.⁵⁵ Misdiagnosis can occur if doctors have limited or incorrect medical history available to them.
- Where a child has been born through treatment overseas, there may be very little information available about the donor(s) and the child may have no legal rights to find their identity.

⁵⁵ UK DonorLink (www.ukdonorlink.org.uk) is the UK's voluntary information exchange and contact register for those directly affected by donor conception prior to August 1991; the HFEA holds a statutory register of information for those concerned from 1st August 1991.