



# Adoption

## A guide for family court users

### Who is this leaflet for?

This leaflet is intended for anyone thinking of applying to a family court for an adoption order under the Adoption and Children Act 2002. It is also for use by legal and child care professionals who are involved in the adoption process.

The leaflet gives general information about who may adopt a child, what information the court will need, and how the court will deal with your application. It is intended as a guide only. It does not give you advice about deciding whether to adopt a child and it is not a full statement of the law, nor does it deal with all the decisions about adoption the courts may make under the Adoption and Children Act 2002.

You can get advice and more information about adoption (and about possible alternatives to adoption, such as step-parental responsibility orders or special guardianship orders) from: your local authority; an approved adoption agency; a solicitor; a Citizens Advice Bureau or a law centre or legal advice centre. Leaflets *CB1 – Children and the family courts* and *CB4 – Special Guardianship – a guide for court users*, also give more information.

You may be able to get free legal information help and advice. Go online at [www.gov.uk/legal-aid](http://www.gov.uk/legal-aid) to find out more.

This leaflet does not deal with the adoption of children from overseas. If you are thinking of adopting a child whose permanent home is outside the British Islands, you should get advice from: your local authority; an approved adoption agency; a solicitor; a law centre or legal advice centre; a Citizens Advice Bureau; or online from [www.direct.gov.uk/en/parents/adoptionfosteringandchildrenincare/adoptionandfostering/DG\\_4018296](http://www.direct.gov.uk/en/parents/adoptionfosteringandchildrenincare/adoptionandfostering/DG_4018296)

Leaflet *A21 Intercountry Adoption – a guide*, also gives more information about adopting a child from abroad. You can get a copy online from [hmctsformfinder.justice.gov.uk](http://hmctsformfinder.justice.gov.uk) or from the family court.

## Who can apply for an adoption order?

A couple may apply to adopt a child provided that, at the time the adoption order is made:

- both of them are at least 21 years of age, or
- one of them is the mother, father or other parent of the child to be adopted and is at least 18 years of age, and the other is at least 21; and
- at least one of the couple is domiciled in a part of the British Islands, or
- both members of the couple have been habitually resident in a part of the British Islands for a period of at least one year, ending with the date of the application to the court.
- any other parent who has parental responsibility for the child (including step-parent).

The definitions of 'Other Parent' are:

- A female in a civil partnership or marriage to a woman under section 42 of the Human Fertilisation and Embryology Act 2008.
- A female not in a civil partnership or marriage to a woman but given consent under sections 43 and 44 of the Human Fertilisation and Embryology Act 2008.

A 'couple' means two people who are living in an enduring family relationship. They may be of different sexes or the same sex, married, unmarried or civil partners.

One person may apply to adopt a child provided that at the time the adoption order is made the person applying is at least 21 years of age and:

- is not married/does not have a civil partner; or
- is the partner of the mother, father or other parent of the child to be adopted; or
- is married or has a civil partner and is able to satisfy the court that:
  - his or her spouse or civil partner cannot be found; or
  - they have separated and are living apart and the separation is likely to be permanent; or
  - his or her spouse or civil partner is physically incapable of making an application or lacks capacity (within the meaning of the Mental Capacity Act 2005) to do so;

and he or she:

- is domiciled in a part of the British Islands, or
- has been habitually resident in a part of the British Islands for a period of at least one year, ending with the date of the application to the court.

'Domicile' is normally taken to mean the place where you have your permanent home.

'Habitual residence' is normally taken to refer to usual, or customary, residence in a particular place.

If you have any doubt about whether you meet these conditions, you should seek legal advice.

## **Does the child I want to adopt have to live with me before I can apply for an adoption order?**

If the child was placed with you for adoption by an adoption agency, or you are a parent of the child, the child must have lived with you (if you are applying as a couple, with one or both of you) at all times during the ten weeks before your application to the court.

Otherwise, the child must have lived with you:

- if you are the partner of the child's parent, at all times during the six months before your application;
- if you are local authority foster parents or relative, at all times during the year before your application;
- in any other case, for a period of three years (whether or not continuous) during the five years before your application.

**Important:** if the child you want to adopt was not placed with you for adoption by an adoption agency, you must notify the local authority for the area in which you live of your intention to apply for an adoption order at least three months before starting your application with the court.

## **Where do I start my adoption application?**

You may make your application to any family court in England and Wales that deals with adoption matters. You do not need to apply to the court which made any previous order

You can find the full list of courts, and information about what type of work they do, online at [courtribunalfinder.service.gov.uk](http://courtribunalfinder.service.gov.uk)

Please note that if you issue your application at your local court, there is a possibility that the birth parent(s) may become aware of the area of the country in which you live.

## **Can my application be heard at another court building?**

You can write to the Judge asking for the hearing to be moved to another court. If the Judge agrees, the court will send a notice to everyone involved in the case telling them the new time, date and location for the appointment.

## Will I have to pay a fee?

A fee is payable for adoption applications. Please ask the court staff for details or for a copy of the leaflet *EX50 – Civil and Family Court Fees*. It is also available online from [hmctsformfinder.justice.gov.uk](http://hmctsformfinder.justice.gov.uk)

If you are issuing applications for siblings at the same time only one fee is payable.

Your financial situation may mean you do not have to pay a court fee, for example, if you are in receipt of a particular means tested benefit or you would suffer financial hardship if you pay the fee. The combined leaflet and application form *EX160A - Court and Tribunal fees – Do I have to pay them?* gives more information. This is available from the court or online at [hmctsformfinder.justice.gov.uk](http://hmctsformfinder.justice.gov.uk)

## What forms and documents will the court need?

The court will need:

- your completed Form A58 (Application for an Adoption Order), and three copies;
- a certified copy of the full birth certificate for the child or, if the child has previously been adopted, a certified copy of the entry in the Adopted Children Register.

You may also have to provide any of the following, depending on your circumstances:

- if the child has been placed for adoption or freed for adoption by a court, a certified copy of the placement order or freeing order;
- if you are asking the court to dispense with the consent of any parent or guardian to the adoption, a brief statement of the facts you are relying on in support of your request (known as a 'Statement of Facts'), and two copies of the statement;
- if you are submitting evidence of your marriage or civil partnership, a certified copy of your marriage certificate or certificate of civil partnership;
- if your spouse or civil partner has died, a certified copy of the death certificate;
- if you are divorced or your civil partnership has been dissolved, a copy of any decree absolute or decree of nullity of your marriage, or a copy of any dissolution order or nullity order of your civil partnership;
- separate medical reports on your health, the health of the child (and other applicant) made during the period of three months before the date of your application. You will not have to supply medical reports if the child was placed with you by an adoption agency, or if he or she is your child or the child of the other applicant, or you are applying alone as the partner (including spouse or civil partner) of the child's mother, father or other parent.

This is not an exhaustive list of the documents the court may need. You will find a list of the documents to be attached on the application form A58. If you are not sure whether any item on the list applies to you, the court staff may be able to help you, however, they are not able to provide legal advice.

## **Where can I get a copy of a certificate of death, marriage or civil partnership, or the child's full birth certificate if I do not have one?**

If you were married in England or Wales, or the child was born in England or Wales, you can get a certified copy from:

- the office of the Registrar of Births, Marriages and Deaths for the district in which you were married, or the district in which the child was born. You can get the address from the telephone book.
- The General Register Office (GRO) overseas local registration service to the public in England and Wales. Certificate Services Section, General Register Office, PO Box 2, Southport PR8 2JD (Telephone: 0300 123 1837) or you can order a replacement certificate online via [www.gro.gov.uk](http://www.gro.gov.uk)

If your civil partnership was registered in England or Wales, you should contact the registration authority where the civil partnership was registered.

If you were married or registered your civil partnership in Scotland or Northern Ireland, or the child you wish to adopt was born in either of these countries, you may obtain further information from:

- The General Register Office for Scotland, New Register House, 3 West Register Street, Edinburgh, EH1 3YT (Telephone: 0131 334 0380); or
- The General Register Office, Oxford House, 49-55 Chichester Street, Belfast, BT1 4HL (Telephone: 0300 200 7890).

**Note:** You will have to pay a fee to receive a copy certificate. The office that you contact will tell you how much it is.

## **What if the child's parents do not consent to the adoption?**

**Note:** This does not apply to children subject to placement or freeing orders.

If the child's parents (with parental responsibility) or guardian have not consented to the adoption and you are asking the court to dispense with their consent, the court will need to be satisfied that:

- the parent or guardian cannot be found, or lacks capacity (within the meaning of the Mental Capacity Act 2005) to give consent, or
- the welfare of the child requires that their consent be dispensed with.

You must set out on your application form which of these conditions applies. You will also need to attach a brief statement of the facts you are relying on in support of your request. This is known as a 'Statement of Facts'.

The court will send a copy of the Statement of Facts to each parent or guardian of the child, so, if you intend to ask the court to keep your identity confidential, you should make certain that the statement does not include any information that could identify you, where you live, or where the child goes to school or nursery.

## **What if the application is contested?**

If the birth parents (or somebody else with parental responsibility) have not consented to your application to adopt then they are entitled to apply to the Court to oppose the adoption order. If the child has been placed with you for adoption by an adoption agency then they will first have to apply for permission to oppose the adoption order.

This could result in your application being delayed until the issue has been resolved. You can expect that the case will be listed for a further hearing at which the birth parents' opposition to the adoption will be considered. Each case will be assessed on its own merits and will have its own unique issues relating to the circumstances of the child in question and the person who is wishing to oppose the adoption.

Where the child concerned has been placed with you for adoption by an adoption agency, a parent or somebody with parental responsibility will have to demonstrate the following if they are to be given permission to oppose or be successful in opposing your application for an adoption order:

1. A change in their circumstances; and
2. that it is in the interests of the child for permission to be granted

## **How will my identity remain confidential?**

The court will allocate a serial number to your application which will ensure that any documents sent to the birth parent(s) or guardian(s) of the child will then show that number and not your personal details. In addition, if you and the parents or guardians of the child have to attend the same court hearing, the court will make arrangements to ensure that your identity remains protected throughout.

## **What will happen when I have left the application with the court?**

You will be sent a form telling you that your application has been issued. If you need a receipt for the fee, please ensure that you request this at the time of application. Every case is different and the court's decision about the next steps will depend on the details of your application, but it is likely that some or all of the following will happen:

- The court may ask for an officer from the Children and Family Court Advisory Support Service (Cafcass) or CAFCASS Cymru to be appointed to act as a children's guardian, a children and family reporter or a reporting officer. The same officer may act as all three.
- The adoption agency or local authority will be asked to prepare a report for the court giving details about the child, you and your family, any parent or guardian of the child and other background information that may help the court.
- The court may arrange a hearing (called a 'first directions hearing'). This will usually take place about four weeks after your application has been received. Details of the hearing will be sent to you or your solicitor, the child's parents, any other person with parental responsibility for the child and any person preparing a report for the court or acting on behalf of the local authority, adoption agency or the child.

## **What is the job of the children's guardian, children and family reporter and the reporting officer?**

Where the child is made a party to the court proceedings, the court will appoint a *children's guardian* to act on behalf of the child in any court hearing. The children's guardian must make a report to the court advising on the interests of the child, and give any other advice the court asks for.

When the court is considering an adoption application, it may appoint a *children and family reporter* to make any necessary investigations and prepare a report on the welfare of the child.

If a parent or guardian of the child appears willing to consent to adoption but has not already done so, the court will appoint a *reporting officer* to witness the signing of the consent form and to make a report on any matters that may help the court in considering the adoption application. If the parent or guardian is not willing to give consent, the reporting officer must make a report to the court explaining why.

## **What is a first directions hearing?**

A first directions hearing is an appointment at which the court will consider your application and make decisions (known as 'directions') about such matters as:

- the timetable for filing any reports from an adoption agency, local authority or Cafcass/CAFCASS Cymru, and any other evidence;
- whether there are any mistakes or omissions in your application or supporting documents that need to be corrected;
- if the child was not placed with you by an adoption agency, whether you need to give the court a statement explaining the background to your application and your reasons for wishing to adopt;

- tracing the child's birth parents, if a father, mother or other parent has not been found;
- using alternative dispute resolution to resolve any contested issues;
- whether the child, or any other person, should be made a party to the application;
- whether the case should be transferred to a higher court;
- whether a further directions hearing is necessary; and
- if possible, the date and place of the final hearing. It is at the final hearing that the adoption order is made, if that is what the court decides.

A copy of the order explaining what directions the court has made will be sent to you or your solicitor.

Once directions have been given, the court will monitor the progress of your case to make certain that the timetable and any directions are complied with.

## **What happens if the court decides to make an adoption order?**

Once an Adoption Order has been granted, a copy of the Adoption Order relating to each child will be sent to you from the Court where the Adoption hearing took place.

You will be invited to attend a celebration hearing with your child/ren. You may request that this hearing is at your local family court.

The Court also sends a copy of the Adoption Order to the General Register Office (GRO) in Southport, Merseyside who use the information contained in the Adoption Order to make an entry in the Adopted Children Register. A new birth certificate is then produced in the child's adoptive name. This document is known as an adoption certificate and replaces the original birth certificate for all legal purposes.

Please read the following questions and answers carefully as it is very important that all the details in the Adoption Order are correct before the entry is made in the Adopted Children Register as this is the information that will appear on the new adoption certificate.

## **What should I do when I receive the Adoption Order?**

Please check that all the details on your copy of the Adoption Order are correct and let the Court know immediately if there is a problem so that an amended Order can be produced by the Court and sent to the General Register Office. Use this checklist to make sure all the details are correct:

Are all the names shown including middle names?

Are all the names spelt correctly?

Are all of the dates shown correct?



Failure to check your Adoption Order could result in a delay making the entry into the Adopted Children Register and you may incur a further fee for a replacement adoption certificate if the register entry needs to be amended at a later date.

## **How long will it take before I receive the new birth certificate?**

The processing time is approximately four weeks once the GRO have received the Adoption Order from the Court. When the Adoption Order has been processed you will then be able to apply for an adoption certificate. The processing times are 15 days for a standard certificate application and 1 day for a priority certificate application.

## **What will I receive from the General Register Office?**

You will receive a letter confirming the entry has been made in the Adopted Children Register and how to order copies of a short or full certificate. Please note that the full certificate will make a clear reference to the fact that the child has been adopted. A full certificate is needed for most legal and administrative purposes and it is the full version that will be required to support your child's passport application. It is important that you do not book any holidays that require a passport until such time as you are actually in receipt of the child's new passport in their new name.