

Report Title: **The Adoption and Children Act 2002**

Forward Plan reference number (if applicable): **Not applicable**

Report of: **Cecilia Hitchen, Deputy Director Children and Families**

Wards(s) affected: **All**

Report for: **Non key**

1. Purpose

- 1.1 To provide members with a understanding of the key changes brought about by the implementation of the Adoption and Children Act 2002

2. Recommendations

- 2.1 That members note the content of the report

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3. Executive Summary

- 3.1 The Adoption & Children Act 2002 will be fully implemented on 30th December 2005. The Act comprehensively covers all areas of adoption activity and provides a clear framework by permanency planning and adoption support. This framework addresses the particular needs of children looked after, their birth families and those adopting them.

4. Reasons for any change in policy or for new policy development (if applicable)

4.1 Not applicable

5. Local Government (Access to Information) Act 1985

5.1 Adoption and Children Act 2002

5.2 Every Child Matters; Adoption and Children Act 2002 Training Practitioners Workbook

5.3 <http://www.ecm.gov.uk/adoptionn2002training>

6. Background

- 6.1 The Adoption of Children Act 1926 was the first time adoption was regulated in England and Wales. Prior to this adoption was carried out on an informal basis within families and between unmarried mothers and childless couples. The Act provided a way for unmarried mothers to remove the stigma of having an illegitimate child by legally transferring the rights and responsibility of parenthood to a married couple.
- 6.2 During the 1930s to 1960s, large numbers of children were adopted. This primarily involved middle class families adopting white, healthy babies born to unmarried mothers or those mothers jointly adopting their babies with a new husband. By 1968 numbers of adoption reached a peak of 25,000 - very few of these children were being adopted out of local authority care.
- 6.3 The 1970s saw the beginnings of a era of significant social, cultural and technological change - legalisation of abortion, the introduction of the contraceptive pill and the beginning of a change in society's view of unmarried mothers and single parenthood - which together brought about a reduction in the number of children available for adoption. However, the number of childless couples seeking adoption remained stable and families started to look at adopting from outside the UK - a largely unregulated process. At the same time it was identified that many older children, disabled children and sibling groups who would have benefited from adoption were drifting in the care system.
- 6.4 The Adoption Act 1976 focused on the needs of children most likely to be adopted at the time – it did not provide specific provision for older children, failed to recognise the lifelong impact of adoption and did not address the welfare of children adopted from abroad.
- 6.5 In 1991 the Children Act 1989 was implemented but it didn't change the legal framework for adoption, the two sets of legislation worked in parallel but had significant differences in focus. In 1998 the number of adoptions had fallen to a low of 4,387 and the number of people looking to adopt from abroad was increasing.
- 6.6 By the 2000s, adoption legislation was extremely outdated and failed to provide a flexible legal framework which was able to address the specific needs of the

type of children requiring permanent new families – children who have been removed from their parents and not children given up due to social stigma.

- 6.7 In 2000 the Prime Minister commissioned a review of adoption on which there was extensive consultation with all the parties involved, after which the White Paper – ‘Adoption: A New Approach’ was produced. The paper advocated reforming the existing system with a raft of new measures to make the adoption procedure more transparent and to synchronise the adoption legislation with the Children Act 1989. Following this, the Adoption and Children Act was passed in 2002, representing a comprehensive and radical overhaul of the legislation relating to adoption, permanency planning for children and young people and the provision of adoption support services.
- 6.8 Some of the key provisions in the Act have already been implemented. These included the introduction of increased regulation of intercountry adoption; the introduction of adoption support services; parental responsibility for unmarried fathers who jointly register the birth of their child with the mother; advocacy service for children and young people making complaints; the independent review of cases where prospective adopters are deemed unsuitable; Independent Reviewing Officers to chair statutory reviews for all Looked After Children and the extension of the definition of “significant harm” in care proceedings to expressly include the harm suffered from seeing or hearing the ill treatment of another.
- 6.9 The Act incorporates many elements from good practice that have developed over time and are already in use to reform and modernise the adoption agenda. This means that many aspects formalise best practice and do not represent significant changes. The Act itself was only fully implemented on 30 December 2005.

7. Description

- 7.1 The new primary legislation, the accompanying eight sets of regulations and additional guidance are extensive and prescribe in detail how the adoption agency conducts its day-to-day business. Below is an outline of the key principles and features that underpin the new legislation:
- The needs of children are placed at the centre of the adoption process so elevating the child’s welfare, throughout his life, to the paramount consideration in all decisions made by the courts and adoption agencies in relation to adoption. The Act brings adoption legislation into line with the Children Act 1989 and introduces a “welfare checklist” (see Appendix 1) which the courts and adoption service must consider when coming to decisions relating to the adoption of a child. The new welfare checklist places considerable emphasis on the family of origin, the child’s existing relationship with family members, the impact in later life of being adopted out of the family and the value of preserving relationships with birth relatives.
 - It highlights the need to avoid undue delay in reaching decisions about a child’s future when they cannot be cared for within their own birth family. The concept

of delay being prejudicial to the child's welfare is taken from the Children Act '89. The Act makes explicit the need to put in place and adhere to timetables throughout the adoption process. It introduces the national adoption register and changes to the court system that are designed to increase the speed at which matters are dealt with and improve the efficiency of the courts.

- It promotes the importance of planning for permanency – looking at the child's welfare not only throughout childhood but beyond into adulthood - and widens the placement options by extending residence orders to the age of 18 years (from 16), if appropriate, and by introducing an additional order for securing legal permanency called special guardianship.
- It has the intention of encouraging more people to adopt looked after children by helping to ensure that appropriate flexible support and financial assistance is available from the point of placement, through childhood to adulthood. In the past many families and single people with the necessary personal attributes to successfully bring up a child who otherwise would have remained in care throughout their childhood were prevented from doing so because they lacked the resources that the care of such a child would demand. In the past local authority support after the adoption order was granted was very limited and universal services often failed to recognise the very particular issues raised by adoption.
- The Act acknowledges the lifelong impact of adoption on not only the child but also the birth family. It introduces a more consistent approach to the release of sensitive and identifying information, which is held in adoption records. It also introduces for the first time regulated intermediary services for birth parents to enable them to trace their adult adopted son or daughter.
- It further tightens up controls and safeguards on inter-country adoption/adoption with a foreign element and changes the way in which children looked after in England can be placed permanently with relatives who are resident outside the UK.

7.2 Article 8 –of the Human Rights Act 1998, “Right to respect for private and family life” aims to prevent unjustified interference by public authorities (in this case the adoption agency and the court) in the family life of an individual. The removal of a child from its parents and the subsequent making of an adoption order, which is irrevocable, potentially represents a major infringement of the parents’ right for private and family life. However, as part of the formal parliamentary process (Section 19 (1) of the Human Right Act 1998) a “view” was taken that the intentions and provisions of the new adoption legislation were compatible with the Convention rights.

7.3 There are three specific new provisions brought in with Act:

- The Local Authority's duty to **maintain an adoption support service** and for those effected by adoption to have an assessment of their needs. Haringey's plans for implementing this aspect of the legislation were presented to Children's Service Advisory Committee in September 2005.

- **New legal processes for the placement of children for adoption.** Previously children who were relinquished (given up for adoption by their parent/s) and children subject to a care order could be placed with adopters. Under the Act a child cannot be placed for adoption under a Care Order. The Act provides two routes for a local authority to place a child for adoption – they can place a child with “parental consent” – either with specific adopters identified in the consent or with adopters chosen by the agency or with the authorisation of the court through a Placement Order. Parents who wish for their child to be adopted must formally consent for adoption (after the child is six weeks old) witnessed by a CAFCASS officer. In such situations birth parents/relatives are offered independent counselling to support them in making a decision and to provide appropriate family information for the child in later life. To obtain a Placement Order the child must either be subject to a care order, or meet Threshold Criteria for Care Proceedings (significant harm) or have no parent or guardian. The Placement Order gives the Local Authority parental responsibility for the child; it also gives prospective adopters parental responsibility once the child is placed with them. Parental responsibility is not taken away from the parents but it does not have the same level of influence as that of the Local Authority or the adopters.
- The introduction of **Special Guardianship** – this is an entirely new order, which fits broadly in between a residence order and adoption order in terms of the carer taking responsibility for the children. Special Guardianship provides legal permanence for those children who need security outside the looked after system but for whom adoption is not appropriate. For instance older children who have enduring ties and significant levels of contact with their birth family; prospective carers who come from religious and cultural groups which have difficulties with adoption as it is set out in the law, and unaccompanied asylum-seeking children who have attachments with their families abroad but need legal security in this country.

8. Consultation

- 8.1 Extensive consultation has taken place nationally to inform the direction of the new legislation and to assist with the development of the supporting regulations and guidance. The consultation process included people who have been adopted, adoptive parents, birth parents and families and professionals from social care and legal backgrounds. At a local level, as part of the North London Adoption Consortium (Barnet, Camden, Enfield, Haringey and Islington) adopters were consulted about the type of adoption support services they would welcome during a specially convened event on 3 December 2005.

9. Summary and Conclusions

- 9.1 The Adoption and Children Act 2002 and the supporting Regulations and Guidance will be fully implemented on 30th December 2005. It provides a detailed framework for securing permanency for children who would otherwise continue to be looked after.

- 9.2 The Act:

- makes the child's welfare the paramount consideration in decision making in the adoption process;
- introduces a Welfare Check list which in addition to the considerations of the Children Act 1989 has a focus on the need to consider the life long impact of adoption for the child and the relationships which the child has and needs to continue to have with relatives;
- promotes the importance of planning for permanence and highlights the need to prevent undue delay
- widens the range of potential adoptive parents – through the introduction of adoption support assessments and services and allowing unmarried couples to adopt jointly
- provides a more consistent approach to the release of information contained in adoption records.

9.3 The Act brings in three specific new provisions:

- The Local Authorities duty to offer an adoption support service to those whose lives are affected by adoption;
- The creation of new legal process for the placement of children for adoption –“Parental Consent” and “Placement Orders”
- The introduction of Special Guardianship – which together with Residence Orders and Adoption Orders provide a broader range of options for ensuring the legal security of children who are unable to live with their birth parents.

10. Recommendations

10.1 It is recommended that members note the content of the report.

11. Comments of the Director of Finance

11.1 Some of the key provisions have already been implemented and 22 adoption orders were assumed in the PBPR straddled over 2005/06 and 2006/07. The current performance indicates 20 adoptions to be finalised by March 2006 which is in line with the budget strategy for 2005/06 and as such, there are no specific financial implications arising from this report. The new requirement of “special guardianship” does, however, have financial implications but this can be contained within the new grant funding arrangement.

12. Comments of the Head of Legal Services

12.1 The new law is accurately summarised in this report.

13. Equalities Implications

13.1 In section 1.5 the act stipulates that “in placing the child for adoption, the adoption agency must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background”. This reinforces what is regarded as good social work practice and is in line with performance in Haringey 2004/05 where all but one child was placed for adoption with a family which broadly reflected the characteristics of their family of origin. The Act also makes provision for unmarried couples to adopt jointly, this has the effect of increasing the potential pool of people coming forward to adopt and has the

additional important advantage of allowing a child an equal legal relationship with both carers.

14. Use of Appendices / Tables / Photographs

Appendix 1 – Welfare Check list – Adoption and Children Act 2005 section 1(4)

APPENDIX 1 WELFARE CHECK LIST

Adoption and Children Act 2005 section 1(4)

The court or adoption agency must have regard to the following matters

- (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding
- (b) the child's particular needs,
- (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and becoming an adoption person,
- (d) the child's age, sex, background and any of the child's characteristics which the court or agency consider relevant,
- (e) any harm (within the meaning of the Children Act 1989 (c41) which the child has suffered or is at risk of suffering,
- (f) the relationship which the child has with relative, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including –
 - (i) the likelihood of any such relationship continuing and the value to the child of its doing so,
 - (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,
 - (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child