



Gwasanaeth  
**Mabwysiadu**  
Cenedlaethol

National  
**Adoption**  
Service

**Achieving More Together /  
Cyflawni Mwy Gyda'n Gilydd**



**The legal framework for adoption**  
The Prospective Adoptive Parent's Guide  
2017



## Introduction

You may be wondering why a prospective adoptive parent needs to know about the law relating to adoption. Surely your social worker will know everything that needs to be known? Surely you covered the law in your preparation course? Well, yes, he or she does and yes, you did, but recent research from Cardiff University showed us that prospective adopters felt they did not know enough about the legal aspects of the process, particularly once the child or children had been placed.

You can read a précis of that research at the end of this guide. The full research is available [here](#).

This guide is written for the National Adoption Service by Sarah Coldrick, legal consultant with AFA Cymru and Julie Doughty, lecturer in law at Cardiff University. It aims to provide information for prospective adoptive parents on the legal framework for each leg of this complicated journey to becoming a family. It is compiled in such a way that you can dip into a particular section as and when required. It is also updated regularly and so represents an accurate picture of the current legal framework in Wales. However, general guidance given here should not be relied upon as a substitute for legal advice from a qualified solicitor regarding any actual legal issue or dispute. Nothing on this website should be construed as legal advice on an individual's situation or problem. Preliminary advice is available from a number of organisations listed at the end of this guide.

### The guide contains information on:

<b>1</b>	The legal system in Wales
<b>2</b>	How children become available for adoption
<b>3</b>	The roles played by the local authority as an adoption agency and the National Adoption Service for Wales
<b>4</b>	Your own and the child's journey to placement
<b>5</b>	Parental responsibility – what it is and how you acquire it
<b>6</b>	The possible challenges for prospective adopters in the court process
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# Section 1

## *The legal system in Wales*

As prospective adoptive parents you will need to know the basic principles of family law in England and Wales and the differences that exist between England and Wales. Here is a brief description of how it all works:

### Primary legislation

Primary legislation is an Act of the **UK Parliament** or an Act of the **Welsh Assembly** for matters that are ‘devolved’ to Wales.

**The Children Act 1989 (UK)** and the **Social Services and Well-being (Wales) Act 2014 (Assembly)** provide the legal framework for a child being supported within his or her family and community. They set out the local authority’s duties and court powers:

- What parental responsibility is, who has it or may acquire it (s2 Children Act 1989)(CA)
- The orders for placements within the wider family – child arrangements orders and special guardianship orders (s8 CA)
- The provision of an assessment for care and support under Part 3 and services under a care and support plan under Part 4 Social Services and Well-being (Wales) Act (SSWBA)
- Child protection (the thresholds for intervention in family life when the local authority believes the child is suffering or is likely to suffer significant harm – s47 CA). There follows a child protection procedure which will involve a child protection conference, the child being placed on the child protection register and the making of a child protection plan.
- Care proceedings – the provisions for interim care orders under s38 CA (made during the course of a set of care proceedings) and a full care order, made at the end of care proceedings, under s31 CA. This is the process whereby the local authority seeks and obtains parental responsibility, with a care order, for a child and has a care plan for adoption for that child endorsed by the court at the final care hearing. Adoption will only be endorsed by the court if reunification with birth parents or a placement with family or friends will not meet the child’s needs.
- The provisions for contact if the child is subject to either an interim care order or a care order.

**The Adoption and Children Act 2002 (UK) (ACA), with some minor Welsh amendments, sets out the legal framework for adoption. Once the court has made the care order and accepted the care plan for adoption, the court will then make a placement order under s21 ACA. This order signposts that the child is on his or her way to an adoptive placement. The placement order remains in place right through matching, introductions and placement until such time as an adoption order is made, under s46 ACA, or the placement order is revoked by the court, in which case the care order is reinstated.**

### Secondary legislation

This is legislation that does not have to go through Parliament or the Assembly. It provides the nuts and bolts of law. Social care law is devolved and so Welsh Government decides on the wording of the Adoption Agencies (Wales) Regulations 2005.

All local authorities are ‘adoption agencies’ and have duties imposed on them in these regulations, which cover:

- Making decisions that a child should be adopted
- Making decisions that adoptive applicants are suitable to adopt
- Making decisions as to proposed placements, i.e. ‘matching’ decisions.

There are also two voluntary adoption agencies (St David's Children's Society and Barnardo's Cymru) in Wales. They make decisions that adoptive parents are suitable to adopt but do not have the other two functions.

Both the Children Act 1989 and the Adoption and Children Act 2002 tell the court that any decision it makes must put the child's welfare as its 'paramount consideration'. The ACA also puts this duty on the adoption agency. This means that, after balancing everyone's rights and interests, it will be the child's welfare that is most important.

See below for more information on who makes these decisions and the role of the National Adoption Service.

### **The European Convention on Human Rights**

This Convention, which dates back to the late 1940's and the terrible aftermath of the Second World War, was made part of our law in England and Wales through the Human Rights Act 1998 (HRA). The HRA made the articles of the ECHR fundamental principles in our family courts. The main articles (for our purposes) are:

- Article 6 – the right to a fair trial
- Article 8 – the right to a private and family life.

Since 2000 when the HRA came into force, there have been many references to these articles in case law, which has to be followed.

The final appeal court for the Convention, the European Court of Human Rights, sits in Strasbourg. It has nothing to do with The EU and Brexit; the court for the EU is the European Court of Justice and sits in Luxembourg.

### **Case law**

It is the role of the senior judiciary in England and Wales to interpret the meaning of statute (Acts of Parliament or the Assembly) and sometimes regulation. The decisions made in interpreting the law must be followed. Some of this case law has had an impact on adoption practice.





## Section 2

### *How do children become available for adoption?*



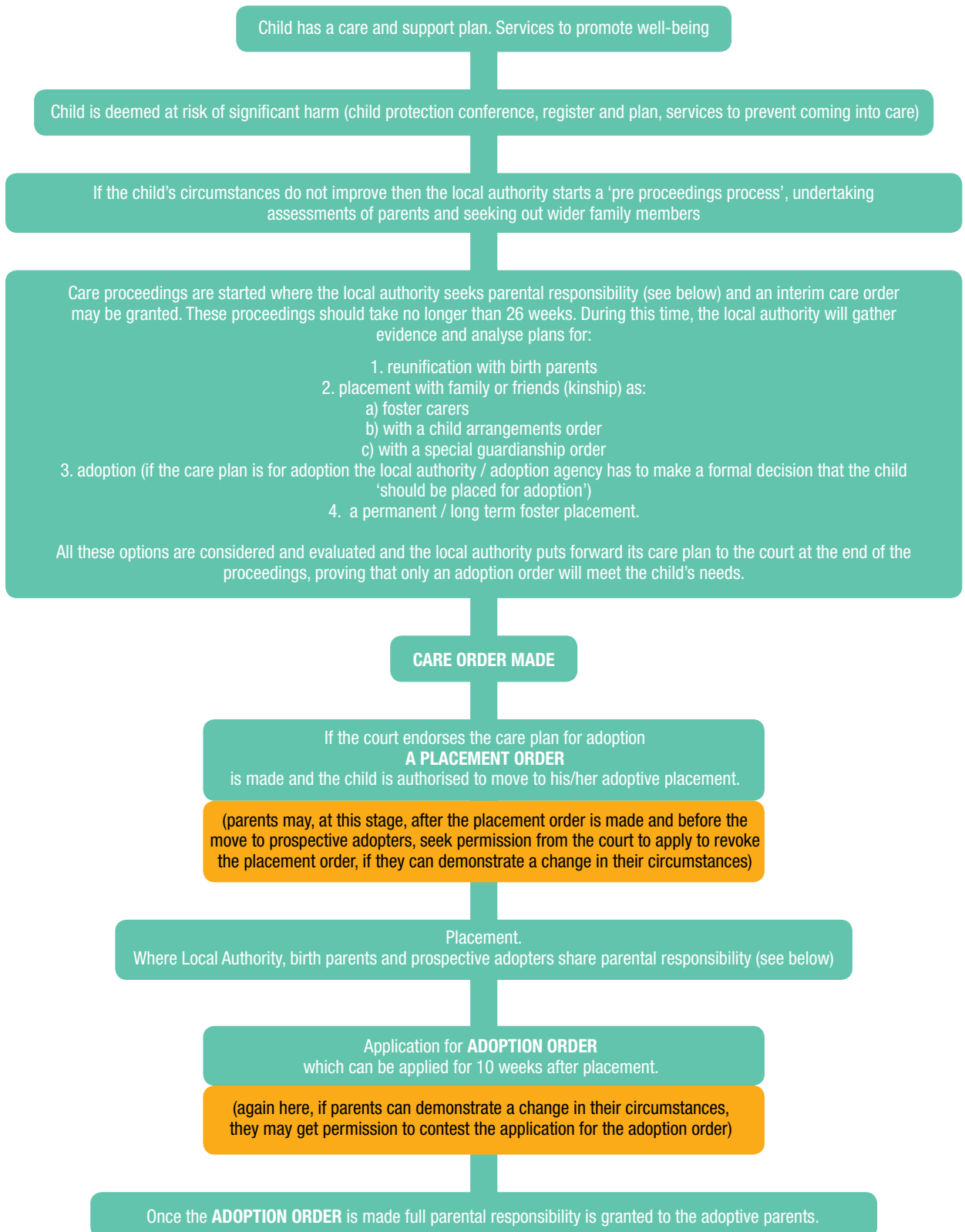
Adoption law is found, therefore, in primary legislation, in regulation and in case law.

The current circumstances of and process for adoption are very different to the era we often see portrayed in the media, where families are reunited, having been separated for years with no information and no contact. In many of these historical cases, the child concerned was removed because the mother was young and / or unmarried, or otherwise unable to financially provide for a child.

The vast majority of children who are available for adoption in Wales today have gone through the 'care' system, the legal framework for which is set out on the next page. Sometimes children are 'relinquished', that is given up voluntarily for adoption, but this is quite rare and the process for ensuring this is a voluntary relinquishment is robust. You may be assured that your child will have gone through a system where great efforts will have been made to support him or her to remain with birth parent(s) or with wider family members. They will only be authorised to be placed for adoption if the court is satisfied that nothing else but adoption will do to meet that child's needs, both now and in the future.

The diagram on the next page represents the stages where the local authority and the family court is involved.

## The child's journey through the care system and the options for permanency in Wales



For more information on the areas in orange, see section 6.

During these proceedings the child/ren will have an independent social worker, called the Children's Guardian, who is appointed to ensure that the child's welfare is served by the orders made. The Guardian is represented in court by the child's solicitor, an experienced lawyer who, again, is independent of the local authority.

# Section 3

## *The roles played by the local authority as an adoption agency and the National Adoption Service for Wales*

The regulations mentioned above, the Adoption Agencies (Wales) Regulations 2005, set out the duties of an adoption agency in relation to:

### **1. Making decisions that a child should be adopted**

This decision is made by the agency decision maker (ADM) who is a senior manager within one of the 22 local authorities in Wales, and will generally be the same local authority that commenced care proceedings and is seeking a care order. There has to be a 'should be placed for adoption' decision by the ADM before the court may consider making a placement order application.

The decision is made following the ADM reading the child's Child Adoption Report (CAR). This is an extensive report, which you will also get to read when considering a match, and provides details of the child and the wider family. The ADM will take advice from a number of people, including the adoption medical adviser, who will have seen the child and perused all relevant (and available) medical history in the family, and the legal adviser. Once that decision is made, the local authority / adoption agency may apply to the court for a placement order.

### **2. Making decisions that adoptive applicants are suitable to adopt**

Up until 2014, the same local authority / adoption agency (of the 22 in Wales) who took the application to court for a care order would have had its own team recruiting, assessing and approving prospective adopters. Since the [National Adoption Service](#) came into being, the roles of an adoption agency in relation to prospective adopters have been allocated to the five 'regional collaboratives', where the 22 LA's have grouped geographically into larger, more economical and specialist teams. You will, therefore, be being, be assessed and approved within one of the following:

- The South East Wales Adoption Service (SEWAS)
- The Vales, Valleys and Cardiff (VVC)
- Western Bay
- Mid and West Wales (MWWAS)
- The North Wales Adoption Service (NWAS).

Within each of these collaborative, there is a 'lead authority', which takes on some additional responsibilities for the whole collaborative.

In addition there are two voluntary adoption agencies in Wales where you may be assessed and approved:

- St David's Children Society
- Barnardo's Cymru.

All seven of these agencies recruit, assess and take to their panel a recommendation that you are 'suitable to adopt a child'. Then the agency decision maker makes the decision. Sometimes there is one ADM for each collaborative, and he or she is the ADM for the lead authority within the collaborative (for example, SEWAS's ADM is the ADM for Blaenau-Gwent). However, in the West Wales collaborative there is more than one ADM. The two voluntary adoption agencies in Wales also have ADM's who can make the decision that applicants are suitable to adopt.

### **3. Making decisions as to proposed placements, i.e. 'matching' decisions**

Here the recommendation for matching will be heard by the relevant collaborative's panel, but the decision to match a particular child with a particular prospective adopter goes back to the local authority ADM (the ADM who made the original 'should be placed for adoption' decision). This is because it is the local authority which still holds parental responsibility for the child.

Some examples of which panel / ADM will be involved:

**1. A child from Pembrokeshire and adopters from Mid and West Wales:**

- Pembrokeshire ADM for child
- MWWAS panel and ADM for prospective adopters suitable to adopt decision
- MWWAS panel and Pembrokeshire ADM for matching decision

**2. A child from Cardiff and adopters from Western Bay:**

- Cardiff ADM for child
- Western Bay panel and ADM for prospective adopters
- VVC panel and Cardiff ADM for matching

**3. A child from Wrexham and adopters from St David's**

- Wrexham ADM for child
- St David's panel and ADM for adopters
- NWAS panel and Wrexham ADM for matching



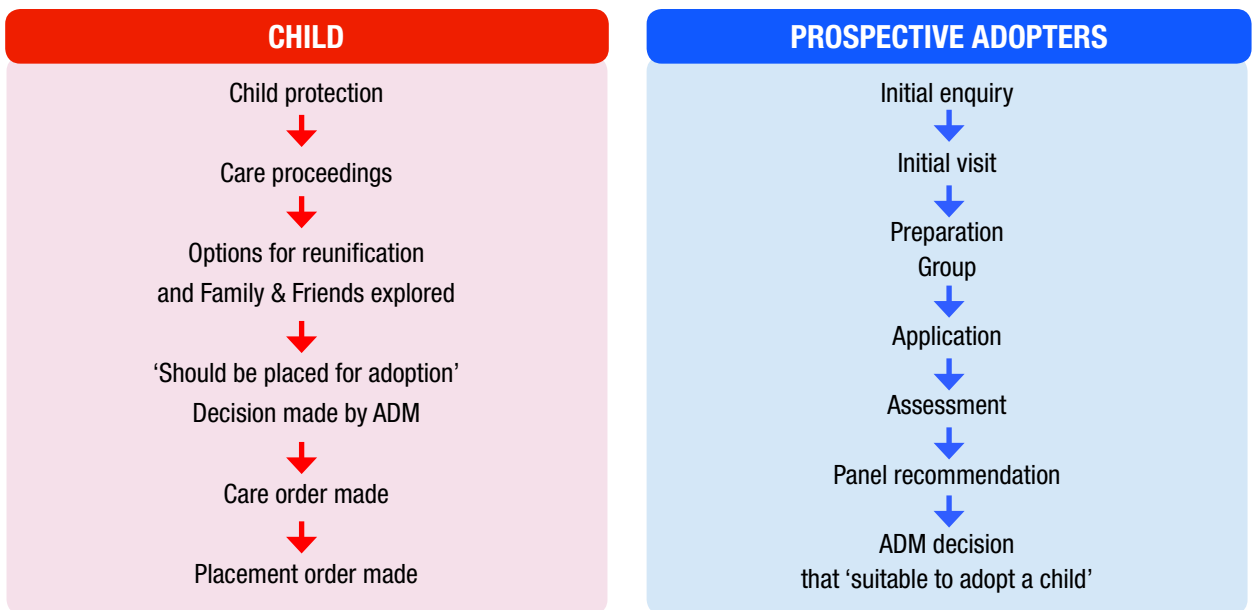


# Section 4

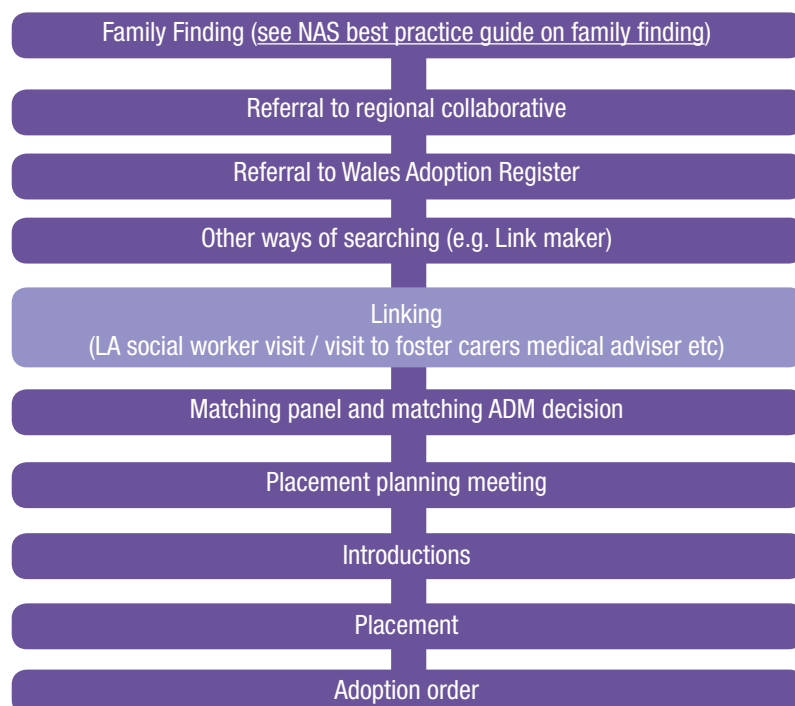
## The journey to placement

Having established who is responsible for which decision, set out below is the process by which you are assessed as suitable to adopt, the decision that your child should be adopted and you are matched with each other:

### Both your own and the child's journey to placement



### How you find each other



## Section 5

### *Parental responsibility*

Parental responsibility is the basis upon which the law decides how adults have rights and responsibilities towards children (from date of birth to 18th birthday).

The definition of parental responsibility (PR) is 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property' (s3(1) Children Act 1989).

All birth (biological) mothers have PR. Birth (biological) fathers have PR if they are married to the mother at the time of the child's birth, or subsequently marry the mother, or their name is on the birth certificate (i.e. they have attended with the mother to register the child's birth).

Once an **interim care order** (ICO) or **care order** (CO) is made, then the local authority acquires parental responsibility and shares it with birth parents. Here the Local Authority (LA) has the power to determine the extent to which the birth parents may exercise their parental responsibility, but may only use it in order to safeguard or promote the child's welfare.

When a placement order (PO) is made, then the adoption agency (which is the same body as the LA) acquires PR and the adoption agency may determine the extent to which birth parents exercise their PR (s25 ACA). Here there is no need to consider the restriction to only use PR to safeguard and promote (though that will continue to be the AA's priority – it just means that, although birth parents' PR still exists, it has become residual).

Upon placement with you (that is the day the child moves in with you, following introductions), you will obtain some PR as well. Therefore during the time between the child moving in and the date of the adoption order, PR is shared between the adoption agency, you as prospective adopters and the birth parents. The Adoption Agency (AA) remains in overall charge and an agreement will be reached between you as to who can decide what. At this stage, although you have PR and will be making day to day decisions like any other parent (choice of school or nursery, food, haircuts, etc) you will want to make major decisions in consultation with the adoption agency, in the form of the child's social worker and your own support worker. The birth parents will be consulted upon major decisions, such as planned surgery, but the decision on anything major will still rest with the adoption agency.

One significant area where adoptive parents struggle with exercising PR is in the change of the child's name, both first name and surname.

In relation to the surname, the law is very clear. Upon placement, and before the adoption order is made, the child may not be known by another surname (that is your surname) unless all those with PR, including birth parents, consent, or the court gives leave for a change of surname. It has been the custom for children to 'be known' by the new adoptive surname, for example at a GP surgery, nursery or school, even though the birth surname is entered on the register. However, case law has made it clear that children should not be 'known as' the new surname, without the consent of all those with PR or leave (permission) of the court. You will, therefore, need to keep to the original surname and if you have worries over security or have an older child placed who wants to start school with the new family surname, you should speak to your social worker or the child's social worker about seeking consent or applying to the court.

So far as the change of first names is concerned, you will know from your preparation course that a change of name should only take place if absolutely necessary (for example if the name is outside the bounds of reasonableness or may provide a security risk). However, there is no legal bar from changing a first name before the adoption order, only the surname.

Upon the making of the order, you are entitled to change the first, middle and surname. The adoption order changes the name legally and that name is placed on the Adopted Children's Register and appears on the child's adoption certificate (replacement for the original birth certificate). Do, however, discuss any major change of first name with your social worker and remember that you will have to account to your child for your actions when they are older.

Once the adoption order is made, you acquire full and exclusive PR for your child and the adoption agency and birth parents cease to have PR. The only way you could ever lose that PR entirely is by the making of another adoption order to someone else.



## Section 6

*An explanation of the processes highlighted in orange in the flow chart – the possible challenges for prospective adopters in the court process*



### **1. Application to revoke the placement order**

When a matching decision has been made, the adoption agency is under a duty to write to the birth parents and inform them that they intend to place the child/ren with you (without giving your details of course).

It is at this stage that birth parents may feel this is their last chance to prevent an adoptive placement by applying for 'leave' to make an application to revoke the child's placement order.

This 'leave' stage is essentially seeking the court's permission to allow an application to take place and to be heard by the court.

In seeking leave the birth parents need to demonstrate that there has been a 'change' in their circumstances since the placement order was made. That change does not need to be significant, but there has to be evidence of an improvement in their lives and capacity to parent since the placement order was made.

If this 'leave' is given to the birth parents to make an application, then that application must be heard before the child is placed with you. Even if introductions have started, once the application for leave is lodged with the court the child or children cannot



be placed with you until leave has either been refused, in which case the child may be placed, or granted, in which case the full hearing, based on the principles set out in s1 ACA 2002, must take place to determine whether the placement order should be revoked.

This can be a very upsetting and unnerving experience for prospective adopters (and for children) if plans for introductions are well under way, but the right to challenge at this stage is part of the checks and balances which ensure that, when the adoption order is eventually made, the birth parents' and child's right to a fair trial (article 6 ECHR) and to a family life (article 8 ECHR) have been properly addressed and only overridden because the child's welfare predominates.

There may, therefore, be some delay in the plans for introductions. It is difficult to state how long that delay may last for, as every case is different. The courts are aware of the distress and inconvenience this process can cause and try to hear a leave application and any subsequent full application as soon as they can.

## **2. An application to contest the adoption application**

You are able to make your application for an adoption order once the child has been placed with you for ten weeks (see next section for details of how to make that application). Once you have lodged the application with the court, the court has a duty to notify the birth parents that the application has been made. As with the application for leave to revoke the placement order, the birth parents need to seek the leave of the court to make an application to contest the making of the adoption order and may do so on the same basis – that is that there has been a change in their circumstances. Here again the court must decide whether to grant leave, if there is a change in circumstances and if it is in the child's best interests that the application to contest is heard. If granted, this does not mean that the court believes that it is in the child's best interests that the adoption order is not made; only that, in a very theoretical sense, it is in the child's best interests for the birth parent to challenge the making of the order.



Again this is very difficult for prospective adopters to deal with, as the child or children are now with you and part of your family. You should be reassured by the fact that successful applications to contest the adoption order are rare. The birth parents' hurdle, in obtaining leave to make the application, is not that high; however, the hurdle in then proving that it is in the child's best interests for an adoption order not to be made at this stage, when the child is settling with you and beginning to make attachments, is very high indeed. Historically the hurdle has only been reached when family members who wish to care for the child have made themselves known to the court at this late stage. However, more recent case law has made it clear that, at this point, the developing and existing right to a family life for the child with prospective adopters, under article 8 ECHR, outweighs any right of a family member, who does not know the child and has therefore not established 'family life' in the sense of an article 8 right.

There is also a possibility that a birth parent or member of the birth family might want to lodge an appeal against a court decision. This is different from the applications above and is made after an order (here an adoption order) has been made. There are strict rules for appealing and this is not common. There is a time limit of 21 days from the date of the making of the order in which to lodge the appeal.

Your social worker should be aware if there is any likelihood of a birth parent having the grounds for an appeal. There is no point in advising prospective adopters not to worry, because, if this does happen to you, it will create anxiety. It is, however, part of the journey for some in becoming adoptive parents, where resilience and 'stickability' are required. You will also receive support and advice from the adoption agency, and in particular your own social worker.

# Section 7

## *The system of reviewing and visiting once the child is placed*



### **The Adoption Agencies (Wales) Regulations 2005**

Once your child is placed with you (the placement starts the day the child moves in permanently), then the regulations state when there must be 'visits' from the agency (this is usually a visit from the child's social worker) and 'reviews' which are meetings, held at your home, where you, the child's social worker, your social worker and an 'independent reviewing officer' (IRO) attend. The IRO has the responsibility for reviewing the child's case, chairs the meeting and has a responsibility to ensure that the child's views are understood and taken into account. She or he also ensures the people responsible for implementing a decision are identified and bring any failure to keep to the decisions and arrangements made to the attention of a senior manager.

#### **Reviews take place:**

- Not more than four weeks after placement
- Not more than three months after the first review
- Not more than six months after that
- Every six months until the adoption order is made or the placement ends

#### **Reviews consider:**

- Whether the child should still be placed for adoption
- The child's welfare, progress and development, and whether any changes need to be made to assist development
- The existing arrangements for contact and whether they should continue or be modified
- The exercise of parental responsibility
- The arrangements for adoption support and whether they should continue or be reassessed
- Arrangements for health care needs and educational needs (in consultation with the appropriate authorities). Where a child has considerable additional health or educational needs it may be appropriate for a relevant person to attend the review

The minutes of the review are placed on the child's 'record' and you also receive a copy.

#### **Visits take place (as a minimum):**

- Within one week of placement
- Thereafter at least once a week until the first review (see above)
- After the first review, at intervals to be decided at the review.

Visits to you and the child will cover welfare and support needs. The length, frequency and timing of visits will depend on the individual child and placement. Some families need more visits because of the complexity of the child's needs, because of the number of children placed or because the adults need help and support in the early weeks and months. The agency will want to provide as much support as is necessary during the early days and this will be part of the adoption support plan designed for your family.

# Section 8

## *Making the application for an adoption order*

As stated above, you may make the application for an adoption order once the child has been placed with you for 10 weeks. Some people want to make the application straight away; others may feel that they need a little more time, perhaps to consolidate any post adoption support or with older children for them to feel ready for the hearing. The timing of the application will be discussed at the second review (so within four months of placement), if it has not already been made.

### **What is involved in making the application**

#### **The process**

The process for making the application for adoption varies between each regional collaborative / VAA. In some areas the adoption agency will file the application on your behalf; in others you will make the application yourself, with help from the agency.

You will not usually need legal advice or representation in making the application and obtaining the adoption order. The application itself is reasonably straightforward, but you need to be organised and realise that the court system is not perfect.

The application will usually be made to the court where the care order and placement order were made, unless there is a good reason not to do so. It is usually thought good practice for the court (usually judge, but sometimes magistrates) who made the previous orders and who know the child, to hear this final application. Your social worker will be able to give you details. Links to the Welsh family courts are to be found at the end of this guide.

A source of information can also be found on the HMCTS (Her Majesty's Court and Tribunals Service) website. Form A20 provides a guide for court users and the Form A58 (the application form itself) has accompanying notes.

#### **Applying to the court in Welsh or English**

The court service follows the principle that the Welsh and English languages are treated equally in all its business and the administration of justice. This means that you can apply with a Welsh application form ([available here](#)), speak Welsh at your hearing, and apply for a bilingual adoption certificate. Your social worker and local court will be able to advise you on this, or you can contact the court service Welsh Language Unit direct on 01286 669800.

You as the applicant(s) (with some assistance from the adoption agency) will need to file:

- 1. The application form A58, (Application for an Adoption Order), plus three copies.** The application form can be downloaded from the [HMCTS website](#). You will need to provide details of you and the child(ren). As you will not want the birth parents to know your details, the court will issue a serial number, which will be used on all court documentation to replace your name. You will also need to enter the name by which the child will be known following the adoption order. This name will then be entered on the 'adoption certificate', which replaces the original birth certificate and will be placed on the Adopted Children's Register.
- 2. The court fee** (currently £170.00). Some agencies will pay this fee; others expect prospective adopters to pay.
- 3. A certified copy of the full birth certificate for the child**, or each child. The child's social worker will provide you with these.
- 4. A certified copy of the placement order.** Again the child's social worker will provide you with this.
- 5. A certified copy of your marriage or civil partnership.** If you only have your original certificate and it is of great emotional value to you, you can obtain further certified copies from the Central Register Office ([www.gro.gov.uk](http://www.gro.gov.uk)). Such originals have been

known to have been lost, so it is better to be safe than sorry. A fee is payable but it is not very expensive.

It is a good idea to send these documents, with a short covering letter to the clerk to the relevant family court, by the most secure postal route available, having made a copy for yourself and a copy for your social worker. Then e mail your social worker and the child's social worker informing them that you have made the application, so that everyone will know of the date that the application was sent and when it will arrive at the court.

You will hear back from the court, in writing, telling you that you that your application form has been issued, giving you a receipt for the fee and informing you of the date of the first directions hearing, in about 4 weeks time.

If you have not heard back from the court within three weeks of posting, then you should telephone the court to enquire what has happened with the application.



You will not be expected to attend the directions hearing, as the birth parents may attend in order to seek leave to contest the application. Your social worker and the child's social worker will attend in your place and inform you of the outcome of the hearing.

The directions hearing will ensure that all the relevant information is filed, including the Annex A report from the adoption agency, providing information on you, the child and how the placement is progressing. A date will be set down for the final hearing, or, if the parents are applying for leave to contest, a date for that hearing.

It will probably feel that this process takes too long and is overly cumbersome. You need to remember that you are almost there.



It is when your application is lodged with the court that the court has a duty to inform the birth parents that the application has been made and the date of the first directions hearing. In some areas the court delegates that responsibility to the local authority. The birth parents may then seek legal advice and apply for leave to contest the adoption application. Legal aid / public funding is not readily available for contested adoption applications and so many birth parents will appear in court unrepresented. This application for leave will usually be dealt with at the first directions hearing and the court will hear the application for leave without you being there. In many cases that application will fail and the hearing will go ahead uncontested. In the event of the application being successful, you will feel panicked, but remember that the court needs to know that it has fulfilled its duties under the Adoption and Children Act 2002 and articles 6 (right to a fair trial) and article 8 (right to a private and family life) of the (ECHR). Recent case law has focussed on the child's article 8 rights in relation to his or her life with you and the attachments and familial bonds that have been developing since placement. Judges have also ruled that grandparents and other family members have not established a right to a family life under article 8 just by having a genetic tie with the child. This case law will help if a family member comes in at this late stage to put themselves forward to care for the child.

If the hearing is contested you may need to give evidence in court about the child and how the placement is going. It does not often happen, but remember that you are now the people who know the child best and that is why the court may want to hear from you. Arrangements will be made to ensure that you do not come into contact and are not seen by birth parents or family.



Your social worker and the child's social worker will be there to support you.

Under certain circumstances, it may be appropriate for you to have your own legal representation, rather than relying on the local authority. If this is the case it is usual for the local authority to pay for reasonable legal expenses.

Even if the hearing is set down by the court as uncontested (that is the birth parents have not applied for, or have not obtained, leave), there is the possibility of parents attending the final hearing 'on spec'. It is for this reason that, in some areas of the country, adoptive parents and children are given leave (permission) not to attend the actual hearing. In other areas, however, you are expected to attend and arrangements are made to keep you and the birth parents separate from each other.

In every case, a 'celebration' hearing is offered and can be held a number of weeks after the adoption order is made, where the child meets the judge or magistrates who made the order, photographs are taken and a certificate, card or small present is given to the child as a memento. The feel of that hearing depends on the individual judiciary – some retain a formality; with others it is very informal. It is always worth checking with the court clerk how the particular judge or magistrates run this event. Your social worker will probably have a good idea if it is a local court.

Some adoptive parents have expressed a disappointment with the celebration hearing, as it is not when the actual order is made and can have a feeling of just going through the motions. However, from the child's point of view, having a photograph to keep of the judge or magistrates who made this important order can have huge significance in later life, even if it doesn't at the time and it is worth making the most of the day, by making it an occasion and accepting the formality as part of that importance. Most families go on to their own celebration of some kind, depending on the child's particular needs.

## Section 9

### *Post adoption contact*

The old idea of an adoption where there is absolutely no contact at all between the child and his or her birth family has long gone. You should only expect a plan for no contact if the parents are dangerous, have disappeared or have died. For many years now research has shown that keeping some sort of contact, along with keeping 'communicative openness' with your child about their birth family, strengthens the child's sense of self esteem and well being and consequently strengthens the adoptive family. Contact also keeps a sense of reality for that child in terms of their 'life journey'.

You will undoubtedly have covered the subject of contact on your preparation course and so this is an outline of the legal framework only:



#### **Birth parents (and wider family's) contact with the child before the care order and placement order is made.**

If your child was removed under the terms of an interim care order during the course of the care proceedings, he or she will have had some contact with birth parents, siblings (if placed separately) and, in some circumstances, wider family members. This contact is provided under s34 Children Act 1989 where the local authority has a duty to provide reasonable contact, so long as it is in the child's best interests. If there is a disagreement about type and frequency of contact between the parties to the care proceedings, then the court may have made a s34 CA89 contact order. These provisions / orders will last until such time as the court makes a placement order. This means that, right up until the making of the care order and placement order, the child may have been having quite frequent contact with birth parents, perhaps a number of times a week.

#### **Contact upon placement order**

Once a child is signposted for adoption by the making of a placement order, the provisions of s34 CA89 cease to apply and the provisions of s26 ACA 2002 come into play. Here there is no duty to provide reasonable contact. The court may, in certain circumstances, make a s26 CA89 contact order, but that is rare. The plan for contact is put before the court as part of the child's court care plan, and will (usually) involve a reduction in direct contact with a cessation of this contact once the plans for introductions with you are in place. Your child will probably have had a final direct contact only a matter of a few weeks before they meet you.

The plan for post adoption contact also forms part of the court care plan and will have been set out in the CAR form, which you will have read before matching. This will usually involve 'letterbox' contact on a once or twice a year basis with birth parents

and perhaps other family members, and, more unusually, direct contact. Direct contact rarely takes place with birth parents, but is becoming more common between siblings, particularly where siblings are separated and there are two adoptive families involved. Direct contact may also be planned with a grandparent who has been a support to the child, but again this is rare. You will be getting advice from your own adoption support service about what to put in a letter and how to manage face to face contact where this is agreed.

You will be presented with the contact plan as part of the child's care plan and it is expected that, should you agree to a match, you also agree to that contact plan; those who currently know the child best believe this contact to be in their best interests and, as prospective adoptive parents, you should honour that agreement.

### **Post adoption order contact**

When it comes to the adoption hearing itself, where you obtain full parental responsibility, it is very rare for the court to make an order for post adoption contact (though there is such a provision for an order in s51A ACA. The courts believe that it is up to you as the full legal parents to decide what is in your child's best interests, but they also expect you to keep to the contact plan put forward by the adoption agency. Sometimes the court will enter the agreement for contact 'on the face of the order'; that is the agreement is written on the adoption order itself. That does not make it an order for contact but demonstrates that a solemn agreement has been made.

Under s51A ACA the court also has the power to order that there be no contact between the adopted child and members of the birth family.

If you decide, having got to know your child and having experienced the effects of any direct contact that you do not believe it to be in the child's best interests, then you are at liberty to change that contact. You will need to provide the agency with good reasons as to why you believe the contact should stop or be altered and will want to do this in conjunction with the agency itself. It is important that you put your reasons in writing to the agency as case law states that you need to do this, in order to provide birth family with reasons.

When the adoption order is being made, birth family members may apply for leave (permission) to make an application for a post adoption contact order. The leave process is robust and the court has to take into account any risk to the child the application may bring, the applicant's connection with the child and the views of the child and adoptive parents. Making orders for contact against the adoptive parents' wishes is a very rare occurrence as the courts do not want to interfere with the exercise of your parental responsibility for your child. However, the provision does exist.





# Section 10

## *Adoption support services*



A combination of the Adoption and Children Act 2002 and another set of regulations, the Adoption Support Services (Local Authorities) (Wales) Regulations 2005, provide the framework for adoption support.

This guide does not cover the details of adoption support, but provides information on the legal framework. You will have looked at this in your preparation courses and there are dedicated adoption support pages on the [NAS website](#).

### **The formulation of a support plan**

When the child's social worker compiles the Child's Adoption Report (CAR), which goes to the local authority agency decision maker for a decision that the child should be placed for adoption, the CAR will contain a support plan, which is based upon the child's individual needs. That plan is revisited at the matching stage, as the support plan will need to reflect not only the child, but also the needs arising from the child being placed with this particular family. By the time the adoption order is made, a matter of months into the placement, the adoption support plan should reflect the foreseeable support needs and the support offered.

The support regulations also state that it is a requirement for all local authority adoption agencies to provide an assessment of adoption support needs for families, so you are within your rights as an adoptive family to ask for an assessment of your adoption support needs at any time until the child is 18. It is now accepted that most adoptive families, at some stage, will need to access support services. Asking for an assessment is a sign of strength, not a sign of weakness; you are creating or completing your family with some of the most vulnerable and complex children in the country. NAS, the regional collaboratives and all the local authorities accept this and work is currently underway, through NAS and the 'Framework for adoption support', to provide easily accessible, consistent and well resourced adoption support services across Wales.

If a child is placed with prospective adoptive parents outside the local authority area in which she or he originally lived, or subsequently moves to a different local authority area, then for the first three years after the adoption order is made, the placing authority has the duty to provide adoption support services. After three years the duty moves to the local authority in which the adoptive family live.

Although the voluntary adoption agencies do not undertake the statutory assessment for adoption support, they will provide an initial consultation to families approved by the agency and assist in determining the type of support required. Adoption UK and AFA Cymru also provide signposting to families seeking advice, information and assistance.



## Section 11

### *Sharing information with your children*

Adoptive parents are the custodians of their children's life story. You are provided with useful tools to help you along the way, but the main source of information for the child will be you.

You will see a copy of the **Child's Adoption Report (CAR)** before you are matched; you will have agreed upon the match having taken on board all the background information about the child and family contained in it. The CAR is placed on the child's adoption record, which is a file that is kept, very securely, with all the information, contact materials and communications made over the years. You will have a copy of the CAR to keep.

After they reach the age of 18, under the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005, the young adopted adult has the right to receive all the information that you have been provided with, and this includes the CAR. Your task, therefore is to make sure that, by the time they reach adulthood, your child knows everything contained in the CAR, so that there are no surprises if she or he seeks access. You provide the information by layering on the detail as the child grows older, keeping this 'open communicativeness' between you.

All children placed for adoption have a 'life story' or 'life journey' book, compiled for them and for you, to begin the process of sharing the information. This should be with you by the second review (that is within 4 months of placement) at the latest. You will also be provided with a 'later life letter' which is written by the child's social worker and given to you to keep and provide at some stage during adolescence. The later life letter creates a bridge between the life story book, which is tailored to meet the age of the child upon placement and the CAR, an adult document.

Some adoptive parents will have especially difficult information to impart to children. In these cases help will be identified and provided through the adoption support plan, with access to specialist services if necessary.



# Section 12

## Useful information / links

Family courts in Wales that deal with adoption:

Here is a list of the local courts. You can also go to the [Court Service site](#) and enter your postcode to find your nearest adoption court and phone number.

### **Welsh Language Helpline**

Tel: 0800 212 368

### **Aberystwyth Justice Centre**

Y Lanfa  
Trefechan  
Aberystwyth  
Ceredigion  
SY23 1AS  
Tel: 01970 621 250

### **Caernarfon County Court and Family Court**

Caernarfon Justice Centre  
Llanberis Road  
Caernarfon  
Gwynedd  
LL55 2DF  
Tel: 01286 684 600

### **Cardiff Civil and Family Justice Centre**

2 Park Street  
Cardiff  
CF10 1ET  
Tel 029 2037 6400

### **Conwy Court Hearings**

Conwy Road  
Llandudno  
Conwy  
LL30 1GA

### **Prestatyn Justice Centre**

County Court and Family Court  
Victoria Road  
Prestatyn  
Denbighshire  
LL19 7TE  
Tel: 01745 851916

### **Haverfordwest County Court and Family Court Hearing Centre**

Penffynnon  
Hawthorn Rise  
Haverfordwest  
Dyfed  
SA61 2AX  
Tel: 01437 772 060

### **Newport Civil and Family Court**

5th Floor  
Clarence House  
Clarence Place  
Newport  
NP19 7AA  
Tel: 01633 245 040

### **Pontypridd County Court and Family Court Hearing Centre**

The Courthouse  
Courthouse Street  
Pontypridd  
Rhondda Cynon Taf  
CF37 1JR  
Tel: 01443 490 800

### **Swansea Civil and Family Justice Centre Hearing Centre**

Caravella House  
Quay West  
Quay Parade  
Swansea  
SA1 1SP  
Tel: 01792 485 800

# Section 13

## *Glossary of abbreviations*

AA (adoption agency)  
ACA (Adoption and Children Act 2002)  
AA(W)R (Adoption Agencies (Wales) Regulations 2005)  
ADM (agency decision maker)  
AO (adoption order)  
CO (care order)  
CA (Children Act 1989)  
CAR (child's adoption report)  
ECHR (European Convention on Human Rights)  
HRA (Human Rights Act 1998)  
IRO (independent reviewing officer)  
ICO (interim care order)  
LA (local authority)  
NAS (National Adoption Service)  
PAR (prospective adopters report)  
PR (parental responsibility)  
PO (placement order)  
SSWBA (Social Services and Well-being (Wales) Act 2014)

### **Wales Adoption Cohort Study**

#### *What adoptive parents told us about going to court*

Principal Investigator: Dr. K. Shelton; funder Health and Care Research Wales, Grant reference: SC-12-04.

Some adoptive parents had been confused and mystified and even anxious about the legal process of adoption. It is unusual for applicants to have legal advice or representation, because adoption applications are generally thought of as straightforward. Adopters are therefore dependent on information from social workers and on their own resources to navigate the court process. After discussing the findings of this study with local lawyers, it was felt that adopters could be better informed and reassured about the legal process during the early stages of placement.

The research team are therefore pleased that the National Adoption Service and AFA Cymru have worked together on producing a guide.

These are some highlights of what adopters told us:

#### **Contested applications:**

Fortunately, most adopters had not encountered unexpected appeals by birth parents or other legal hurdles to the adoption. Those who had faced contested applications (one third) usually felt they had been accurately informed about what to expect. Some, however, had resorted to research on the internet because they did not understand why or how birth parents were in a position to object to the application at a late stage.

#### **Delays:**

Almost all the adopters wanted to proceed with the application as soon as the requisite 10 week period after placement expired. Delays – especially if they were unexplained – were very frustrating and could create anxieties. Two-fifths of the questionnaire responses mentioned administrative delays by local authority social workers. Adopters were aware that social workers had large

caseloads and were under pressure, so were usually sympathetic when delays occurred. It was more being left for weeks with no news, then discovering matters had not progressed, that they found unsettling.

### **Payment of the court fee:**

Not everyone had been fully informed about having to pay the court fee, currently £170. Some local authorities offered to help with payment but there was inconsistency.

### **The celebration hearing:**

Most families had enjoyed the celebration hearing and those whose children were old enough to understand its meaning felt it was an important landmark event for them. However, a few adopters had not attended because they thought it would be too formal.

### **Other problems:**

- Difficulties in getting passports.
- Uncertainty about using a new name for the child.
- Receiving unexpected letters from birth parents.
- Little recall of what the pre-adoption training had included about the stages after placement.
- Not knowing what had happened to their marriage certificate.
- When to expect hearing dates after the application had gone in.
- Jargon used in letters from the court.
- Some adopters were not informed when the order had gone through and did not know who was responsible for telling them.

### **Conclusion:**

Our research did not find any evidence that a placement had been adversely affected by these problems, but there was a strong message from adoptive applicants that they would have been reassured and less anxious if they knew what to expect about the court process. Parents made some suggestions, such as a leaflet explaining legal terms; a step-by-step guide or flowchart of the process; and simply knowing who was responsible for what, and when. At the crucial early stages of early placement, it is important to try to avoid unnecessary doubts and uncertainty, simply because of procedural matters.



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