

Adoption Act 2023

Principal Act

Act. No. 2023-04

Commencement (LN.2024/046)
Assent

18.4.2024
25.1.2023

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AN ACT TO PROVIDE FOR THE REGULATION OF THE LAW RELATING TO ADOPTION AND FOR CONNECTED PURPOSES.

PART I
Preliminary

Title.

1. This Act may be cited as the Adoption Act 2023.

Commencement.

2. This Act comes into operation on the day the Minister appoints by notice in the Gazette, and the Minister may appoint different days for different provisions or purposes.

Interpretation.

- 3.(1) In this Act unless the context otherwise requires-

“adopter” means a person who has been authorised to adopt a child;

“adoption order” means an order made under this Act authorising an applicant to adopt a child;

“adoption service” means the services maintained by the Government under section 5(1);

“adoption support services” means counselling, advice and information and any other services prescribed by regulations, in relation to adoption;

“Agency” means the Care Agency established under section 3 of the Care Agency Act 2009;

“agreement” includes an arrangement (whether or not enforceable);

“appointed day” means the day of the coming into force of this Act;

“body” includes an unincorporated body;

“by virtue of” includes “by” and “under”;

“child”, except where used to express a relationship, means a person who has not attained the age of 18 years;

“the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;

“Convention adoption order” means an adoption order which is made as a Convention adoption order;

“Convention country” means a country or territory in which the Convention is in force;

“court” means a court established under section 3 of the Magistrates’ Court Act or the Supreme Court of Gibraltar;

“enactment” includes an enactment comprised in subsidiary legislation;

“fee” includes expenses;

“guardian” in relation to a child, means any person lawfully appointed to be that child’s guardian;

“information” means information recorded in any form;

“Minister” means the Minister with responsibility for families and children;

“notice” means a notice in writing;

“prescribed” means prescribed by subsidiary legislation;

“records” includes certified copies kept by the Registrar of Births and Deaths of entries in any register of births;

“registers of births” means the registers of births made under the Births and Deaths Registration Act;

“regulations” means regulations made by the Minister;

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by marriage or civil partnership;

“rules” means family procedure rules made or used by virtue of section 101;

“subsidiary legislation” has the same meaning as in the Interpretation and General Clauses Act;

(2) Any power conferred by this Act to prescribe a fee by regulations includes power to prescribe—

(a) a fee not exceeding a prescribed amount;

(b) a fee calculated in accordance with the regulations.

- (3) In this Act, a couple means—
- (a) a married couple; or
 - (b) two people who are civil partners of each other; or
 - (c) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.
- (4) Subsection (3)(c) does not include two people one of whom is the other's parent, grandparent, sister, brother, aunt or uncle.
- (5) References to relationships in subsection (4)—
- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for adoption; and
 - (b) include the relationship of a child with his adoptive, or former adoptive, parents,
- but do not include any other adoptive relationships.
- (6) For the purposes of this Act, 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.
- (7) Any register, record or index maintained under this Act may be maintained in any form the Registrar of Births and Deaths considers appropriate; and references (however expressed) to entries in such a register, or to their amendment, marking or cancellation, are to be read accordingly.
- (8) References to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside Gibraltar.

Considerations to be taken in the application of the exercise of powers.

- 4.(1) Whenever a court or the Agency is coming to a decision relating to the adoption of a child, the paramount consideration of the court or the Agency must be the child's welfare, throughout the child's life.
- (2) The court or the Agency must at all times consider that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.
- (3) The court or the Agency must have regard to the following matters, among others—

-
- (a) the child’s ascertainable wishes and feelings regarding the decision, subject to 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 birth family and become an adopted person;
 - (d) the child’s age, sex, background and any of the child’s characteristics which the court or Agency considers relevant;
 - (e) any harm within the meaning of the Children Act 2009 which the child has suffered or is at risk of suffering;
 - (f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or the 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;
 - (g) the child’s religious persuasion, racial origin and cultural and linguistic background;
 - (h) the value to the child of a stable and harmonious family unit.
- (4) In coming to a decision relating to the adoption of a child, a court or the Agency must always consider the whole range of powers available to it in the child’s case whether under this Act or the Children Act 2009; and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.
- (5) In this section, “coming to a decision relating to the adoption of a child”, in relation to a court, includes—
- (a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a

placement order (or the revocation of such an order) or an order under section 21 or 47 (or the revocation or variation of such an order);

- (b) coming to a decision about granting permission in respect of any action (other than the initiation of proceedings in any court) which may be taken by the Agency under this Act,

but does not include coming to a decision about granting permission in any other circumstances.

(6) For the purposes of this section—

- (a) references to relationships are not confined to legal relationships;
- (b) references to a relative, in relation to a child, include the child's mother and father.

PART II

The adoption service

Maintenance of Adoption Service.

5.(1) The Government shall continue to maintain within Gibraltar an adoption service designed to meet the needs, in relation to adoption, of—

- (a) children who may be adopted, their parents and guardians;
- (b) persons wishing to adopt a child; and
- (c) adopted persons, their parents, natural parents and former guardians;

and for that purpose must provide the requisite facilities.

(2) The facilities referred to in subsection (1) must include making, and participating in, arrangements—

- (a) for the adoption of children; and
- (b) for the provision of adoption support services.

(3) As part of the adoption service, the arrangements made for the purposes of subsection (2)(b)—

- (a) must extend to the provision of adoption support services to persons who are within a description designated by order by the Minister;

- (b) may extend to the provision of the adoption services to other persons.
- (4) The Minister may provide any of the requisite facilities by securing their provision by other persons who are within a description designated by order of persons who may provide the facilities in question.

Arrangements.

6.(1) The Government shall continue to make arrangements and give directions for all or any of its functions within subsection (2) to be carried out on its behalf by the Agency.

- (2) The functions mentioned in subsection (1) are functions in relation to—
- (a) the recruitment of persons as prospective adopters;
 - (b) the assessment of prospective adopters' suitability to adopt a child;
 - (c) the approval of prospective adopters as suitable to adopt a child;
 - (d) decisions as to whether a particular child should be placed for adoption with a particular prospective adopter;
 - (e) the provision of adoption support services.

(3) The Government may give a direction requiring the Agency to terminate arrangements made in accordance with a direction under subsection (1).

Assessments for adoption support services.

7.(1) The Agency must at the request of—

- (a) any of the persons mentioned in sections 5(1) (a) to (c); or
- (b) any other person who falls within a description prescribed by regulations (subject to subsection (7)(a)),

carry out an assessment of that person's needs for adoption support services.

(2) The Agency may, at the request of any person, carry out an assessment of that person's needs for adoption support services.

(3) The Agency may request the help of the persons mentioned in section 5(4) in carrying out an assessment.

(4) Where, as a result of an assessment, the Agency decides that a person has needs for adoption support services, they must then decide whether to provide any adoption support services to that person.

(5) If—

- (a) the Agency decides to provide any adoption support services to a person; and
- (b) the circumstances fall within a description designated by order of the Minister,

the Agency must prepare a plan in accordance with which adoption support services are to be provided to the person and keep the plan under review.

(6) The Minister may issue directions about assessments, preparing and reviewing plans, the provision of adoption support services in accordance with plans and reviewing the provision of adoption support services.

(7) The directions mentioned in subsection (6) may in particular make provision—

- (a) as to the circumstances in which a person mentioned in subsection (1)(b) is to have a right to request an assessment of that person's needs in accordance with that subsection;
- (b) about the type of assessment which, or the way in which an assessment, is to be carried out;
- (c) about the way in which a plan is to be prepared;
- (d) about the way in which, and time at which, a plan or the provision of adoption support services is to be reviewed;
- (e) about the considerations to which the Agency is to have regard in carrying out an assessment or review or preparing a plan;
- (f) as to the circumstances in which the Agency may provide adoption support services subject to conditions;
- (g) as to the consequences of conditions imposed by virtue of subsection (7)(f) not being met.

(8) The Agency may carry out an assessment of the needs of any person under this section at the same time as an assessment of that person's needs is made under any other enactment.

(9) If at any time during the assessment of the needs of any person under this section, it appears to the Agency that there may be a need for the provision of services to that person by-

- (a) the Gibraltar Health Authority;
- (b) the Department of Education; or
- (c) any other person appointed by the Government for the purposes of this section,

the Agency must notify the Gibraltar Health Authority, Department of Education or the appointed person.

(10) Where it appears to the Agency that another public authority could, by taking any specified action, help in the exercise of any of the Agency's functions under this section, the Agency may request the help of that other public authority, specifying the action in question.

(11) A public authority whose help is so requested must comply with the request if it is consistent with the exercise of their functions.

Duty to provide information in respect of adoption support services.

8.(1) The Agency must provide the information specified in subsection (2) to—

- (a) any person who has contacted the Agency to request information about adopting a child;
- (b) any person who has informed the Agency that he or she wishes to adopt a child;
- (c) any person who the Agency is aware is a parent of an adopted child; and
- (d) any person who is a parent of an adopted child and has contacted the Agency to request any of the information specified in subsection (2).

(2) The information mentioned in subsection (1) is—

- (a) information about the adoption support services available;
- (b) information about the right to request an assessment under section 7, and the Agency's duties under that section and regulations made under it;
- (c) any other information as may be prescribed by regulations.

Regulations

General power to regulate.

9.(1) The Minister may by regulations make provision for any purpose relating to the exercise by the Agency of its functions in relation to adoption or to any matter relating to adoption.

(2) The Minister may by regulations provide that a person who contravenes or fails to comply with any provision of regulations under this section is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Regulations under this section may make provision as to the establishment and conduct of voluntary adoption agencies, and may in particular make provision—

- (a) as to the facilities and services to be provided by a voluntary adoption agency;
- (b) as to the keeping of accounts;
- (c) as to the notification to the Agency of events occurring in premises used for the purposes of a voluntary adoption agency;
- (d) as to the giving of notice to the Agency of periods during which the manager of a voluntary adoption agency proposes to be absent, and specifying the information to be given in such a notice;
- (e) as to the making of adequate arrangements for the running of a voluntary adoption agency during a period when its manager is absent;
- (f) as to the giving of notice to the Agency of any intended change in the identity of the manager;
- (g) as to the giving of notice to the Agency of changes in the ownership of an agency or the identity of its officers;
- (h) requiring the payment of a prescribed fee to the Agency in respect of any notification required to be made by virtue of subsection (3)(g);
- (i) requiring arrangements to be made for dealing with complaints made by or on behalf of those seeking, or receiving, any of the services provided by a voluntary adoption agency and requiring the agency or manager to take steps for publicising the arrangements.

Independent review of determinations.

10.(1) Regulations made under section 9 may establish a procedure under which any person in respect of whom a qualifying determination has been made by the Agency may apply to the Minister for a review of that determination by a panel constituted by the Minister.

(2) The regulations must make provision as to the description of determinations which are qualifying determinations for the purposes of subsection (1).

(3) The regulations may include provision as to—

- (a) the duties and powers of a panel;
- (b) the administration and procedures of a panel;
- (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment);
- (d) the duties of the Agency in connection with reviews conducted under the regulations;
- (e) the monitoring of any reviews.

Supplemental

Information concerning adoption.

11.(1) The Agency must give to the Minister any statistical or other general information the Minister requires about—

- (a) its performance of all or any of its functions relating to adoption;
- (b) the children and other persons in relation to whom it has exercised those functions.

(2) The relevant officer of the Supreme Court must give to the Minister any statistical or other general information the Minister requires about the proceedings under this Act of the court in question.

(3) In subsection (2), “relevant officer”, in relation to the Supreme Court, means the officer of that court who is designated to act for the purposes of that subsection.

(4) The information required to be given to the Minister under this section must be given at the times, and in the form, directed by the Minister.

(5) The Minister may publish from time to time abstracts of the information given to the Minister under this section.

Default power of the Minister.

12.(1) If the Minister is satisfied that the Agency has failed, without reasonable excuse, to comply with any of the duties imposed on it by virtue of this Act, the Minister may make an order declaring the Agency to be in default in respect of that duty.

(2) An order under subsection (1) must give the Minister's reasons for making it.

(3) An order under subsection (1) may contain such directions as appear to the Minister to be necessary for the purpose of ensuring that, within the period specified in the order, the duty is complied with.

(4) Any such directions are enforceable, on the Minister's application, by a mandatory order issued by the court.

Inspection of premises.

13.(1) The Minister may arrange for any premises in which—

- (a) a child is living with a person with whom the child has been placed by the Agency;
or
- (b) a child in respect of whom a notice of intention to adopt has been given under section 39 is, or will be, living,

to be inspected from time to time.

(2) The Minister may require the Agency—

- (a) to give the Minister any information; or
- (b) to allow the Minister to inspect any records (in whatever form they are held),

relating to the discharge of any of its functions in relation to adoption which the Minister specifies.

(3) An inspection under this section must be conducted by a person authorised by the Minister.

(4) An officer of the Agency may only be so authorised with the consent of the Agency.

(5) A person inspecting any premises under subsection (1) may—

- (a) visit the child there;
- (b) make any examination into the state of the premises and the treatment of the child there which he or she thinks fit.

(6) A person authorised to inspect any records under this section may at any reasonable time have access to, and inspect and check the operation of, any computer (and associated apparatus) which is being or has been used in connection with the records in question.

(7) A person authorised to inspect any premises or records under this section may—

- (a) enter the premises for that purpose at any reasonable time;
- (b) require any person to give him or her any reasonable assistance he or she may require.

(8) A person exercising a power under this section must, if required to do so, produce a duly authenticated document showing his or her authority.

(9) Any person who intentionally obstructs another in the exercise of a power under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART III

Placement for adoption and adoption orders

Placement for adoption by the Agency.

14.(1) The Agency may—

- (a) place a child for adoption with prospective adopters; or
- (b) where it has placed a child with any persons (whether under this Part or not), leave the child with them as prospective adopters,

but, except in the case of a child who is less than six weeks old, may only do so under section 15 or a placement order.

(2) The Agency may only place a child for adoption with prospective adopters if the Agency is satisfied that the child ought to be placed for adoption.

(3) A child who is placed or authorised to be placed for adoption with prospective adopters by the Agency is looked after by the Agency.

(4) If an application for an adoption order has been made by any persons in respect of a child and has not been disposed of—

- (a) the Agency may leave the child with those persons until the application is disposed of; but

- (b) apart from that, the child may not be placed for adoption with any prospective adopters.
- (5) References in this Act (apart from this section) to the Agency placing a child for adoption—
- (a) are to its placing a child for adoption with prospective adopters; and
 - (b) include, where it has placed a child with any persons (whether under this Act or not), leaving the child with them as prospective adopters;
- and references in this Act (apart from this section) to a child who is placed for adoption by the Agency are to be interpreted accordingly.
- (6) References in this Part to the Agency being, or not being, authorised to place a child for adoption are to the Agency being or (as the case may be) not being authorised to do so under section 15 or a placement order.
- (7) This section is subject to sections 25 to 30.

Placing children with parental consent.

- 15.(1) Where the Agency is satisfied that each parent or guardian of a child has consented to the child—
- (a) being placed for adoption with prospective adopters identified in the consent; or
 - (b) being placed for adoption with any prospective adopters who may be chosen by the Agency,
- and has not withdrawn the consent, the Agency is authorised to place the child for adoption accordingly.
- (2) Consent to a child being placed for adoption with prospective adopters identified in the consent may be combined with consent to the child subsequently being placed for adoption with any prospective adopters who may be chosen by the Agency in circumstances where the child is removed from or returned by the identified prospective adopters.
- (3) Subsection (1) does not apply where—
- (a) an application has been made on which a care order might be made and the application has not been disposed of; or
 - (b) a care order or placement order has been made after the consent was given.

(4) References in this Act to a child placed for adoption under this section include a child who was placed under this section with prospective adopters and continues to be placed with them, whether or not consent to the placement has been withdrawn.

(5) This section is subject to section 49.

Advance consent to adoption.

16.(1) A parent or guardian of a child who consents to the child being placed for adoption by the Agency under section 15 may, at the same or any subsequent time, consent to the making of a future adoption order.

(2) Consent under this section—

- (a) where the parent or guardian has consented to the child being placed for adoption with prospective adopters identified in the consent, may be consent to adoption by them; or
- (b) may be consent to adoption by any prospective adopters who may be chosen by the Agency.

(3) A person may withdraw any consent given under this section.

(4) A person who gives consent under this section may, at the same or any subsequent time, by notice given to the Agency—

- (a) state that he or she does not wish to be informed of any application for an adoption order; or
- (b) withdraw such a statement.

(5) A notice under subsection (4) has effect from the time when it is received by the Agency but has no effect if the person concerned has withdrawn their consent.

(6) This section is subject to section 49.

Placement orders.

17.(1) A placement order is an order made by the court authorising the Agency to place a child for adoption with any prospective adopters who may be chosen by the Agency.

(2) The court may not make a placement order in respect of a child unless—

- (a) the child is subject to a care order;

- (b) the court is satisfied that the conditions in section 64(2) of the Children Act 2009 are met; or
 - (c) the child has no parent or guardian.
- (3) The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied—
- (a) that the parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the Agency and has not withdrawn the consent; or
 - (b) that the parent's or guardian's consent should be dispensed with.

This subsection is subject to section 49.

- (4) A placement order continues in force until—
- (a) it is revoked under section 19;
 - (b) an adoption order is made in respect of the child; or
 - (c) the child marries, forms a civil partnership or attains the age of 18 years.

Applications for placement orders.

- 18.(1) The Agency must apply to the court for a placement order in respect of a child if—
- (a) the child is placed for adoption by them or is being provided with accommodation by them;
 - (b) the Agency is not authorised to place the child for adoption;
 - (c) the child has no parent or guardian or the Agency consider that the conditions in section 64(2) of the Children Act 2009 are met; and
 - (d) the Agency is satisfied that the child ought to be placed for adoption.
- (2) If—
- (a) an application has been made (and has not been disposed of) on which a care order might be made in respect of a child; or

- (b) a child is subject to a care order and the Agency is not authorised to place the child for adoption,

the Agency must apply to the court for a placement order if it is satisfied that the child ought to be placed for adoption.

(3) If—

- (a) a child is subject to a care order; and
- (b) the Agency is authorised to place the child for adoption under section 15;

the Agency may apply to the court for a placement order.

(4) If the Agency—

- (a) is under a duty to apply to the court for a placement order in respect of a child; or
- (b) has applied for a placement order in respect of a child and the application has not been disposed of;

the child is looked after by the Agency.

(5) Subsections (1) to (3) do not apply in respect of a child—

- (a) if any persons have given notice of intention to adopt, unless the period of four months beginning with the giving of the notice has expired without them applying for an adoption order or their application for such an order has been withdrawn or refused; or
- (b) if an application for an adoption order has been made and has not been disposed of.

(6) Where—

- (a) an application for a placement order in respect of a child has been made and has not been disposed of; and
- (b) no interim care order is in force,

the court may give any directions it considers appropriate for the medical or psychiatric examination or other assessment of the child; but a child who is of sufficient understanding to make an informed decision may refuse to submit to the examination or other assessment.

(7) The Agency—

- (a) in relation to a care order, is the authority in whose care the child is placed by the order; and
- (b) in relation to an application on which a care order might be made, is the authority which makes the application.

Revoking placement orders.

19.(1) The court may revoke a placement order on the application of any person.

(2) But an application may not be made by a person other than the child or the Agency authorised by the order to place the child for adoption unless—

- (a) the court has given permission to apply; and
- (b) the child is not placed for adoption by the Agency.

(3) The court cannot give permission under subsection (2)(a) unless it is satisfied that there has been a change in circumstances since the order was made.

(4) If the court determines, on an application for an adoption order, not to make the order, it may revoke any placement order in respect of the child.

(5) Where—

- (a) an application for the revocation of a placement order has been made and has not been disposed of; and
- (b) the child is not placed for adoption by the Agency,

the child may not without the court's permission be placed for adoption under the order.

Parental responsibility.

20.(1) This section applies while—

- (a) a child is placed for adoption under section 15 or the Agency is authorised to place a child for adoption under that section; or
- (b) a placement order is in force in respect of a child.

(2) Parental responsibility for the child is given to the Agency.

(3) While the child is placed with prospective adopters, parental responsibility is given to them.

(4) The Agency may determine that the parental responsibility of any parent or guardian, or of prospective adopters, is to be restricted to the extent specified in the determination.

Contact.

21.(1) On the Agency being authorised to place a child for adoption, or placing a child for adoption who is less than six weeks old—

- (a) any contact provision in an order made under section 25 of the Children Act 2009 ceases to have effect;
- (b) any order under section 68 of the Children Act 2009 ceases to have effect; and
- (c) any contact activity direction made in proceedings for the making, variation or discharge of an order made under section 25 of the Children's Act 2009 with respect to the child, or made in other proceedings that relate to such an order, is discharged.

(2) While the Agency is so authorised or a child is placed for adoption—

- (a) no application may be made for —
 - (i) an order made under section 25 of the Children Act 2009 containing contact provision; or
 - (ii) an order under section 68 of the Children Act 2009, but
- (b) the court may make an order under this section requiring the person with whom the child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for the person named in the order and the child otherwise to have contact with each other.

(3) An application for an order under this section may be made by—

- (a) the child or the Agency;
- (b) any parent, guardian or relative;
- (c) any person in whose favour there was provision which ceased to have effect by virtue of subsection (1)(a) or an order which ceased to have effect by virtue of subsection (1)(b);

- (d) if an order made under section 25 of the Children Act 2009 was in force immediately before the Agency was authorised to place the child for adoption or (as the case may be) placed the child for adoption at a time when the child was less than six weeks old, any person named in the order as a person with whom the child was to live;
 - (e) if a person had care of the child immediately before that time by virtue of an order made in the exercise of the Supreme Court’s inherent jurisdiction with respect to children, that person,
 - (f) any person who has obtained the court’s permission to make the application.
- (4) When making a placement order, the court may on its own initiative make an order under this section.
- (5) In this section “contact provision” means provision which regulates arrangements relating to—
- (a) with whom a child is to spend time or otherwise have contact; or
 - (b) when a child is to spend time or otherwise have contact with any person;
- but in subsections (5)(a) and (b) a reference to spending time or otherwise having contact with a person is to spending time or having contact otherwise than as a result of living with the person.
- (6) In this section “contact activity direction” has the meaning given by section 32 of the Children Act 2009.

Supplementary provision as to contact.

22.(1) An order under section 21—

- (a) has effect while the Agency is authorised to place the child for adoption or the child is placed for adoption; but
 - (b) may be varied or revoked by the court on an application by the child, the agency or a person named in the order.
- (2) The Agency may refuse to allow the contact that would otherwise be required by virtue of an order under that section if—
- (a) it is satisfied that it is necessary to do so in order to safeguard or promote the child’s welfare; and

- (b) the refusal is decided upon as a matter of urgency and does not last for more than seven days.
- (3) Regulations may make provisions in respect of —
- (a) the steps to be taken by the Agency after exercising its power under subsection (2);
 - (b) the circumstances in which, and conditions subject to which, the terms of any order under section 21 may be departed from by agreement between the Agency and any person for whose contact with the child the order provides;
 - (c) notification by the Agency of any variation or suspension of arrangements made (otherwise than under an order under that section) with a view to allowing any person contact with the child.
- (4) Before making a placement order the court must—
- (a) consider the arrangements which the Agency has made, or proposes to make, for allowing any person contact with the child; and
 - (b) invite the parties to the proceedings to comment on those arrangements.
- (5) An order under section 21 may provide for contact on any conditions the court considers appropriate.

Further consequences of placement.

- 23.(1) Where a child is placed for adoption under section 15 or the Agency is authorised to place a child for adoption under that section—
- (a) a parent or guardian of the child may not apply for an order made under section 25 of the Children Act 2009 regulating the child's living arrangements unless an application for an adoption order has been made and the parent or guardian has obtained the court's permission under subsection (3) or (5) of section 42;
 - (b) if an application has been made for an adoption order, a guardian of the child may not apply for a special guardianship order unless he has obtained the court's permission under subsection (3) or (5) of section 42.
- (2) Where—
- (a) a child is placed for adoption under section 15 or the Agency is authorised to place a child for adoption under that section; or
 - (b) a placement order is in force in respect of a child,

then (whether or not the child is in Gibraltar) a person may not do either of the things appearing in subsection (3), unless the court gives permission or each parent or guardian of the child gives written consent.

(3) The things mentioned in subsection (2) are—

- (a) causing the child to be known by a new surname; or
- (b) removing the child from Gibraltar.

(4) Subsection (3) does not prevent the removal of a child from Gibraltar for a period of less than one month by a person who provides the child's home.

(5) For the purposes of subsection (1)(a), an order made under section 25 of the Children Act 2009 regulates a child's living arrangements if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following—

- (a) with whom the child is to live; and
- (b) when the child is to live with any person.

Further consequences of placement orders.

24.(1) Where a placement order is made in respect of a child and either—

- (a) the child is subject to a care order; or
- (b) the court at the same time makes a care order in respect of the child,

the care order does not have effect at any time when the placement order is in force.

(2) On the making of a placement order in respect of a child, any order mentioned in section 25(1) of the Children Act 2009, and any supervision order in respect of the child, ceases to have effect.

(3) Where a placement order is in force—

- (a) no prohibited steps order or specific issue order; and
- (b) no supervision order or child assessment order,

may be made in respect of the child.

(4) Where a placement order is in force, an order made under section 25 of the Children Act 2009 may be made with respect to the child's living arrangements only if—

- (a) an application for an adoption order has been made in respect of the child; and
- (b) the order made under section 25 of the Children Act 2009 is applied for by a parent or guardian who has obtained the court's permission under subsection (3) or (5) of section 42 or by any other person who has obtained the court's permission under this subsection.

(5) For the purposes of subsection (4), an order made under section 25 of the Children Act 2009 is one made with respect to a child's living arrangements if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following—

- (a) with whom the child is to live; and
- (b) when the child is to live with any person.

(6) Where a placement order is in force, no special guardianship order may be made in respect of the child unless—

- (a) an application has been made for an adoption order; and
- (b) the person applying for the special guardianship order has obtained the court's permission under this subsection or, if he or she is a guardian of the child, has obtained the court's permission under section 42(5).

(7) Section 18(8) of the Children Act 2009 shall apply in respect of an application for a special guardianship order for which permission has been given as mentioned in subsection (5)(b) with the omission of the words "the beginning of the period of three months ending with".

(8) Where a placement order is in force—

- (a) section 20(1)(b) of the Children Act 2009 has effect subject to any determination under section 20(4) of this Act;
- (b) section 20(3) and (4) of the Children Act 2009 does not apply.

Removal of children who are or may be placed by the Agency

General prohibitions on removal.

25.(1) Where—

- (a) a child is placed for adoption by the Agency under section 15; or
- (b) a child is placed for adoption by the Agency and either the child is less than six weeks old or the Agency has at no time been authorised to place the child for adoption,

a person (other than the Agency) must not remove the child from the prospective adopters.

(2) Where—

- (a) a child who is not for the time being placed for adoption is being provided with accommodation by the Agency; and
- (b) the Agency has applied to the court for a placement order and the application has not been disposed of,

only a person who has the court's permission (or the Agency) may remove the child from the accommodation.

(3) Where subsection (2) does not apply, but—

- (a) a child who is not for the time being placed for adoption is being provided with accommodation by the Agency; and
- (b) the Agency is authorised to place the child for adoption under section 15 or would be so authorised if any consent to placement under that section had not been withdrawn,

a person (other than the Agency) must not remove the child from the accommodation.

(4) This section is subject to sections 26 to 28 but those sections do not apply if the child is subject to a care order.

(5) Sections 25 to 30-

- (a) apply whether or not the child in question is in Gibraltar;
- (b) do not affect the exercise by the Agency or other person of any power conferred by any enactment, other than section 106(5) of the Children Act 2009;
- (c) do not prevent the removal of a child who is arrested.

(6) A person who removes a child in contravention of this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

Recovery by parent where child not placed or is a baby.

26.(1) Subsection (2) applies where—

- (a) a child who is not for the time being placed for adoption is being provided with accommodation by the Agency; and
- (b) the Agency would be authorised to place the child for adoption under section 15 if consent to placement under that section had not been withdrawn.

(2) If any parent or guardian of the child informs the Agency that they wish the child to be returned to them, the Agency must return the child to them within the period of seven days beginning with the request unless an application is, or has been, made for a placement order and the application has not been disposed of.

(3) Subsection (4) applies where—

- (a) a child is placed for adoption by the Agency and either the child is less than six weeks old or the Agency has at no time been authorised to place the child for adoption; and
- (b) any parent or guardian of the child informs the Agency that he or she wishes the child to be returned to them,

unless an application is, or has been, made for a placement order and the application has not been disposed of.

(4) The Agency must give notice of the parent's or guardian's wish to the prospective adopters who must return the child to the Agency within the period of seven days beginning with the day on which the notice is given.

(5) A prospective adopter who fails to comply with subsection (4) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

(6) As soon as a child is returned to the Agency under subsection (4), the Agency must return the child to the parent or guardian in question.

Recovery by parent where child placed and consent withdrawn.

27.(1) This section applies where—

- (a) a child is placed for adoption by the Agency under section 15; and
- (b) consent to placement under that section has been withdrawn,

unless an application is, or has been, made for a placement order and the application has not been disposed of.

(2) If a parent or guardian of the child informs the Agency that they wish the child to be returned to them—

- (a) the Agency must give notice of the parent's or guardian's wish to the prospective adopters; and
- (b) the prospective adopters must return the child to the Agency within the period of 14 days beginning with the day on which the notice is given.

(3) A prospective adopter who fails to comply with subsection (2)(b) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

(4) As soon as a child is returned to the Agency under this section, the Agency must return the child to the parent or guardian in question.

(5) Where a notice under subsection (2) is given, but—

- (a) before the notice was given, an application—
 - (i) for an adoption order;
 - (ii) for a special guardianship order;
 - (iii) for an order made under section 25 of the Children Act 2009 to which subsection (6) applies; or
 - (iv) for permission to apply for an order within subsections (5)(a)(ii) or (iii),

was made in respect of the child; and

- (b) the application (and, in a case where permission is given on an application to apply for an order within subsection(a)(ii) or (iii), the application for the order) has not been disposed of,

the prospective adopters are not required by virtue of the notice to return the child to the Agency unless the court so orders.

(6) An order made under section 25 of the Children Act 2009 is one to which this subsection applies if it is an order regulating arrangements that consist of, or include, arrangements which relate to either or both of the following—

- (a) with whom a child is to live; and
- (b) when the child is to live with any person.

Recovery by parent where child placed and placement order refused.

28.(1) This section applies where—

- (a) a child is placed for adoption by the Agency under section 15;
- (b) the Agency have applied for a placement order and the application has been refused; and
- (c) any parent or guardian of the child informs the Agency that they wish the child to be returned to them.

(2) The prospective adopters must return the child to the Agency on a date determined by the court.

(3) A prospective adopter who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

(4) As soon as a child is returned to the Agency, they must return the child to the parent or guardian in question.

Placement orders: prohibition on removal.

29.(1) Where a placement order in respect of a child—

- (a) is in force; or
- (b) has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by the Agency,

a person (other than the Agency) may not remove the child from the prospective adopters or from accommodation provided by the Agency.

(2) A person who removes a child in contravention of subsection (1) is guilty of an offence.

(3) Where a court revoking a placement order in respect of a child determines that the child is not to remain with any former prospective adopters with whom the child is placed, they must return the child to the Agency within the period determined by the court for the purpose; and a person who fails to do so is guilty of an offence.

(4) Where a court revoking a placement order in respect of a child determines that the child is to be returned to a parent or guardian, the Agency must return the child to the parent or guardian as soon as the child is returned to the Agency or, where the child is in accommodation provided by the Agency, at once.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

(6) This section does not affect the exercise by the Agency or other person of a power conferred by any enactment, other than section 106(5) of the Children Act 2009.

Return of child in other cases.

30.(1) Where a child is placed for adoption by the Agency and the prospective adopters give notice to the Agency of their wish to return the child, the Agency must—

- (a) receive the child from the prospective adopters before the end of the period of seven days beginning with the giving of the notice; and
 - (b) give notice to any parent or guardian of the child of the prospective adopters' wish to return the child.
- (2) Where a child is placed for adoption by the Agency, and the Agency—
- (a) is of the opinion that the child should not remain with the prospective adopters; and
 - (b) gives notice to them of its opinion,

the prospective adopters must, not later than the end of the period of seven days beginning with the giving of the notice, return the child to the Agency.

(3) If the Agency gives notice under subsection (2)(b), it must give notice to any parent or guardian of the child of the obligation to return the child to the Agency.

(4) A prospective adopter who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

(5) Where—

- (a) the Agency gives notice under subsection (2) in respect of a child;
- (b) before the notice was given, an application—
 - (i) for an adoption order;
 - (ii) for a special guardianship order;
 - (iii) for an order made under section 25 of the Children Act 2009 to which subsection (6) applies; or
 - (iv) for permission to apply for an order within subsection (5)(b)(ii) or (iii),

was made in respect of the child, and

- (c) the application (and, in a case where permission is given on an application to apply for an order within subsection (5)(b)(ii) or (iii), the application for the order) has not been disposed of,

prospective adopters are not required by virtue of the notice to return the child to the Agency unless the court so orders.

(6) An order made under section 25 of the Children Act 2009 is one to which this subsection applies if it is an order regulating arrangements that consist of, or include, arrangements which relate to either or both of the following—

- (a) with whom a child is to live; and
- (b) when a child is to live with any person.

Removal of children in non-Agency cases

Restrictions on removal.

31.(1) At any time when a child's home is with any persons ("P") with whom the child is not placed by the Agency, but P—

- (a) have applied for an adoption order in respect of the child and the application has not been disposed of;
- (b) have given notice of intention to adopt; or

- (c) have applied for permission to apply for an adoption order under section 37(6) and the application has not been disposed of,

a person may remove the child only in accordance with the provisions of sections 31 to 35.

(2) For the purposes of sections 31 to 35, a notice of intention to adopt is to be disregarded if—

- (a) the period of four months beginning with the giving of the notice has expired without P applying for an adoption order; or
- (b) the notice is a second or subsequent notice of intention to adopt and was given during the period of five months beginning with the giving of the preceding notice.

(3) For the purposes of sections 31 to 35, if P apply for permission to apply for an adoption order under section 37(6) and the permission is granted, the application for permission is not to be treated as disposed of until the period of three days beginning with the granting of the permission has expired.

(4) This section does not prevent the removal of a child who is arrested.

(5) Where a parent or guardian may remove a child from the P in accordance with the provisions of sections 31 to 35, P must at the request of the parent or guardian return the child to the parent or guardian at once.

(6) A person who—

- (a) fails to comply with subsection (5); or
- (b) removes a child in contravention of this section,

is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

(7) Sections 31 to 35 apply whether or not the child in question is in Gibraltar.

Applicants for adoption.

32. If section 31(1)(a) applies, the following persons may remove the child—

- (a) a person who has the court's permission;
- (b) the Agency or other person in the exercise of a power conferred by any enactment, other than section 106(5) of the Children Act 2009.

Agency foster parents.

33.(1) This section applies if the child's home is with Agency foster parents.

(2) If—

- (a) the child has had its home with the Agency foster parents at all times during the period of three years ending with the removal and the Agency foster parents have given notice of intention to adopt; or
- (b) an application has been made for permission under section 37(6) and has not been disposed of,

the persons appearing in subsection (3) may remove the child.

(3) The persons referred to in subsection (2) are—

- (a) a person who has the court's permission;
- (b) the Agency or other person in the exercise of a power conferred by any enactment, other than section 106(5) of the Children Act 2009.

(4) If subsection (2) does not apply but—

- (a) the child has had his home with the Agency foster parents at all times during the period of one year ending with the removal; and
- (b) the foster parents have given notice of intention to adopt;

the persons in subsection (5) may remove the child.

(5) The persons referred to in subsection (4) are—

- (a) a person with parental responsibility for the child who is exercising the power in section 106(5) of the Children Act 2009;
- (b) a person who has the court's permission;
- (c) the Agency or other person in the exercise of a power conferred by any enactment, other than section 106(5) of the Children Act 2009.

Partners of parents.

34.(1) This section applies if a child's home is with a partner of a parent and the partner has given notice of intention to adopt.

(2) If the child's home has been with the partner for not less than three years (whether continuous or not) during the period of five years ending with the removal, the following persons may remove the child—

- (a) a person who has the court's permission;
- (b) the Agency or other person in the exercise of a power conferred by any enactment, other than section 106(5) of the Children Act 2009.

(3) If subsection (2) does not apply, the following persons may remove the child—

- (a) a parent or guardian;
- (b) a person who has the court's permission;
- (c) the Agency or other person in the exercise of a power conferred by any enactment, other than section 106(5) of the Children Act 2009.

Other non-Agency cases.

35.(1) In any case where sections 32 to 34 do not apply but—

- (a) the people concerned have given notice of intention to adopt; or
- (b) the people concerned have applied for permission under section 37(6) and the application has not been disposed of,

the persons appearing in subsection (2) may remove the child.

(2) The persons referred to in subsection (1) are—

- (a) a person who has the court's permission;
- (b) the Agency or other person in the exercise of a power conferred by any enactment, other than section 106(5) of the Children Act 2009.

Breach of restrictions on removal

Recovery orders.

36.(1) This section applies where it appears to the court—

- (a) that a child has been removed in contravention of any of the preceding provisions of this Part or that there are reasonable grounds for believing that a person intends to remove a child in contravention of those provisions; or
 - (b) that a person has failed to comply with section 26(4), 27(2), 28(2), 29(3) or 30(2).
- (2) The court may, on the application of any person, by an order—
- (a) direct any person who is in a position to do so to produce the child on request to any person mentioned in subsection (4);
 - (b) authorise the removal of the child by any person mentioned in that subsection;
 - (c) require any person who has information as to the child's whereabouts to disclose that information on request to any police officer or officer of the court;
 - (d) authorise a police officer to enter any premises specified in the order and search for the child, using reasonable force if necessary.
- (3) Premises may only be specified under subsection (2)(d) if it appears to the court that there are reasonable grounds for believing the child to be on them.
- (4) The persons referred to in subsection (2) are—
- (a) any person named by the court;
 - (b) any police officer;
 - (c) any person who, after the order is made under that subsection, is authorised to exercise any power under the order by the Agency.
- (5) A person who intentionally obstructs a person exercising a power of removal conferred by the order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) No person shall be excused from complying with any request made under subsection (2)(c) on the ground that complying with it might incriminate them or their spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for an offence other than perjury.

Preliminaries to adoption

Child to live with adopters before application.

37.(1) An application for an adoption order may not be made unless—

- (a) if subsection (2) applies, the condition in that subsection is met;
 - (b) if subsection (2) does not apply, the condition in whichever is applicable of subsections (3) to (5) applies.
- (2) If —
- (a) the child was placed for adoption with the applicant or applicants by the Agency or in pursuance of an order of the Supreme Court; or
 - (b) the applicant is a parent of the child;
- the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both at all times during the period of ten weeks preceding the application.
- (3) If the applicant or one of the applicants is the partner of a parent of the child, the condition is that the child must have always had his home with the applicant or applicants during the period of six months preceding the application.
- (4) If the applicants are Agency foster parents, the condition is that the child must have always had his home with the applicants during the period of one year preceding the application.
- (5) In any other case, the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both for not less than three years (whether continuous or not) during the period of five years preceding the application.
- (6) Subsections (4) and (5) do not prevent an application being made if the court gives permission to make it.
- (7) An adoption order may not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a couple, both together in the home environment have been given where the child was placed for adoption with the applicant or applicants by the Agency.

Reports where child placed by Agency.

38. Where an application for an adoption order relates to a child placed for adoption by the Agency, the Agency must—

- (a) submit to the court a report on the suitability of the applicants and on any other matters relevant to the operation of section 4; and

- (b) assist the court in any manner the court directs.

Notice of intention to adopt.

39.(1) This section applies where persons (referred to in this section as “proposed adopters”) wish to adopt a child who is not placed for adoption with them by the Agency.

(2) An adoption order may not be made in respect of the child unless the proposed adopters have given notice to the Agency of their intention to apply for the adoption order (referred to in this Act as a “notice of intention to adopt”).

(3) The notice of intention to adopt must be given not more than two years, or less than three months, before the date on which the application for the adoption order is made.

(4) Where—

(a) if a person were seeking to apply for an adoption order, subsection (4) or (5) of section 37 would apply; but

(b) the condition in the subsection in question is not met;

the person may not give notice of intention to adopt unless he or she has the court’s permission to apply for an adoption order.

(5) On receipt of a notice of intention to adopt, the Agency must arrange for the investigation of the matter and submit to the court a report of the investigation.

(6) The investigation must, so far as practicable, include the suitability of the proposed adopters and any other matters relevant to the operation of section 4 in relation to the application.

(7) Where—

(a) the Agency has placed a child with any persons otherwise than as prospective adopters; and

(b) the persons give notice of intention to adopt;

the Agency are not to be treated as leaving the child with them as prospective adopters for the purposes of section 14(1)(b).

Suitability of adopters.

40.(1) The Minister may by regulations make provision as to the matters to be considered by the Agency in determining, or making any report in respect of, the suitability of any persons to adopt a child.

(2) The regulations referred to in subsection (1) may make provision for the purpose of securing that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship.

(3) Nothing in subsection (1) or (2) affects the application of section 4.

The making of adoption orders

Adoption orders.

41.(1) An adoption order is an order made by the court on an application under section 45 or 46 giving parental responsibility for a child to the adopters or adopter.

(2) The making of an adoption order shall extinguish—

- (a) the parental responsibility which any person other than the adopters or adopter has for the adopted child immediately before the making of the order;
- (b) any duty arising by virtue of an agreement or an order of a court to make payments, so far as the payments are in respect of the adopted child's maintenance or upbringing for any period after the making of the adoption order;
- (c) any order under the Children Act 2009.

(3) An adoption order—

- (a) does not affect parental responsibility so far as it relates to any period before the making of the order; and
- (b) in the case of an order made on an application under section 46(2) by the partner of a parent of the adopted child, does not affect the parental responsibility of that parent or any duties of that parent within subsection (2)(d).

(4) Subsection (2)(b) does not apply to a duty arising by virtue of an agreement—

- (a) which constitutes a trust; or
- (b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.

(5) An adoption order may be made even if the child to be adopted is already an adopted child.

(6) Before making an adoption 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 proceedings.

Conditions for making adoption orders.

42.(1) Subject to section 49, an adoption order may not be made if the child has a parent or guardian unless one of the following two conditions is met.

(2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied—

- (a) that the parent or guardian consents to the making of the adoption order;
- (b) that the parent or guardian has consented under section 16 (and has not withdrawn the consent) and does not oppose the making of the adoption order; or
- (c) that the parent's or guardian's consent should be dispensed with.

(3) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court's permission.

(4) The second condition is that—

- (a) the child has been placed for adoption by the Agency with the prospective adopters in whose favour the order is proposed to be made;
- (b) either—
 - (i) the child was placed for adoption with the consent of each parent or guardian and the consent of the mother was given when the child was at least six weeks old; or
 - (ii) the child was placed for adoption under a placement order; and
- (c) no parent or guardian opposes the making of the adoption order.

(5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court's permission.

(6) The court cannot give permission under subsection (3) or (5) unless satisfied that there has been a change in circumstances since the consent of the parent or guardian was given or the placement order was made.

(7) An adoption order may not be made in relation to a person who-

- (a) is or has been married;
- (b) is or has been a civil partner; or
- (c) has attained the age of 19 years.

Restrictions on making adoption orders.

43. The court may not hear an application for an adoption order in relation to a child, where a previous application to which an adoption order applies made in relation to the child by the same persons was refused by any court, unless it appears to the court that, because of a change in circumstances or for any other reason, it is proper to hear the application.

Applications for adoption.

44.(1) An application for an adoption order may be made by—

- (a) a couple; or
- (b) one person,

but only if it is made under section 45 or 46 and one of the following conditions is met.

(2) The first condition is that at least one of the couple (in the case of an application under section 45) or the applicant (in the case of an application under section 46) is domiciled in Gibraltar.

(3) The second condition is that both of the couple (in the case of an application under section 45) or the applicant (in the case of an application under section 46) have been habitually resident in Gibraltar for a period of not less than one year ending with the date of the application.

(4) An application for an adoption order may only be made if the person to be adopted has not attained the age of 18 years on the date of the application.

(5) References in this Act to a child, in connection with any proceedings (whether or not concluded) for adoption, (such as “child to be adopted” or “adopted child”) include a person who has attained the age of 18 years before the proceedings are concluded.

Adoption by couple.

45.(1) An adoption order may be made on the application of a couple where both have attained the age of 21 years.

- (2) An adoption order may be made on the application of a couple where—
- (a) one of the couple is the mother or the father of the person to be adopted and has attained the age of 18 years; and
 - (b) the other has attained the age of 21 years.

Adoption by one person.

46.(1) An adoption order may be made on the application of one person who has attained the age of 21 years and is not married or a civil partner.

(2) An adoption order may be made on the application of one person who has attained the age of 21 years if the court is satisfied that the person is the partner of a parent of the person to be adopted.

(3) An adoption order may be made on the application of one person who has attained the age of 21 years and is married or is a civil partner if the court is satisfied that—

- (a) the person's spouse or civil partner cannot be found;
- (b) the spouses or civil partners have separated and are living apart, and the separation is likely to be permanent; or
- (c) the person's spouse or civil partner is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.

(4) An adoption order may not be made on an application under this section by the mother or the father of the person to be adopted unless the court is satisfied that—

- (a) the other natural parent is dead or cannot be found;
- (b) by virtue of the relevant provisions of the Surrogacy Act 2021, there is no other parent; or
- (c) there is some other reason justifying the child's being adopted by the applicant alone,

and, where the court makes an adoption order on such an application, the court must record that it is satisfied as to the fact mentioned in subsection (4)(a) or (b) or, in the case of subsection (4)(c), record the reason.

Post-adoption contact.

47.(1) This section applies where—

- (a) the Agency has placed or was authorised to place a child for adoption; and
- (b) the court is making or has made an adoption order in respect of the child.

(2) When making the adoption order or at any time afterwards, the court may make an order under this section—

- (a) requiring the person in whose favour the adoption order is or has been made to allow the child to visit or stay with the person named in the order under this section, or for the person named in that order and the child otherwise to have contact with each other; or
- (b) prohibiting the person named in the order under this section from having contact with the child.

(3) The following people may be named in an order under this section—

- (a) any person who (but for the child's adoption) would be related to the child by blood (including half-blood), marriage or civil partnership;
- (b) any former guardian of the child;
- (c) any person who had parental responsibility for the child immediately before the making of the adoption order;
- (d) any person who was entitled to make an application for an order under section 21 in respect of the child by virtue of subsection (3)(c), (d) or (e) of that section;
- (e) any person with whom the child has lived for a period of at least one year.

(4) An application for an order under this section may be made by—

- (a) a person who has applied for the adoption order or in whose favour the adoption order is or has been made;
- (b) the child; or
- (c) any person who has obtained the court's permission to make the application.

(5) In deciding whether to grant permission under subsection (4)(c), the court must consider—

-
- (a) any risk there might be of the proposed application disrupting the child's life to such an extent that he or she would be harmed by it (within the meaning of the Children Act 2009);
 - (b) the applicant's connection with the child; and
 - (c) any representations made to the court by—
 - (i) the child;
 - (ii) a person who has applied for the adoption order or in whose favour the adoption order is or has been made; or
 - (iii) the Agency, if relevant.
- (6) When making an adoption order, the court may on its own initiative make an order of the type mentioned in subsection (2)(b).
- (7) The period of one year mentioned in subsection (3)(e) need not be continuous but must not have begun more than five years before the making of the application.
- (8) Where this section applies, an order made under section 25 of the Children Act 2009 may not make provision about contact between the child and any person who may be named in an order under this section.

Orders under section 47.

48.(1) An order under section 47—

- (a) may contain directions about how it is to be carried into effect;
 - (b) may be made subject to any conditions the court thinks appropriate;
 - (c) may be varied or revoked by the court on an application by the child, a person in whose favour the adoption order was made or a person named in the order; and
 - (d) has effect until the child's 18th birthday, unless revoked.
- (2) Subsection (3) shall apply to proceedings—
- (a) on an application for an adoption order in which—
 - (i) an application is made for an order under section 47; or

- (ii) the court indicates that it is considering making such an order on its own initiative;
 - (b) on an application for an order under section 47;
 - (c) on an application for such an order to be varied or revoked.
- (3) The court must (subject to any rules made by virtue of subsection (4))—
 - (a) draw up a timetable with a view to determining without delay whether to make, (or as the case may be) vary or revoke an order under section 47; and
 - (b) give directions for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.
- (4) Rules of court may—
 - (a) specify periods within which specified steps must be taken in relation to proceedings to which subsection (3) applies; and
 - (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that the court makes determinations about orders under section 47 without delay.

Placement and adoption: general

Parental consent.

49.(1) The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that—

- (a) the parent or guardian cannot be found or lacks capacity (within the meaning of the Mental Health Act 2016) to give consent; or
 - (b) the welfare of the child requires the consent to be dispensed with.
- (2) The following provisions apply to references in this Part to any parent or guardian of a child giving or withdrawing—
 - (a) consent to the placement of a child for adoption; or
 - (b) consent to the making of an adoption order (including a future adoption order).

(3) Any consent given by the mother to the making of an adoption order is ineffective if it is given less than six weeks after the child's birth.

(4) The withdrawal of any consent to the placement of a child for adoption, or of any consent given under section 16, is ineffective if it is given after an application for an adoption order is made.

(5) Consent under section 15 or 16 must be given in the form prescribed by rules, and the rules may prescribe forms in which a person giving consent under any other provision of this Part may do so (if they so wish).

(6) Consent given under section 15 or 16 must be withdrawn—

- (a) in the form prescribed by rules; or
- (b) by notice given to the Agency.

(7) Subsection (8) applies if—

- (a) the Agency has placed a child for adoption under section 15 in pursuance of consent given by a parent of the child; and
- (b) at a later time, the other parent of the child acquires parental responsibility for the child.

(8) The other parent is to be treated as having at that time given consent in accordance with this section in the same terms as those in which the first parent gave consent.

(9) In this section-

- (a) "consent" means consent given unconditionally and with full understanding of what is involved; but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made;
- (b) "parent" (except in subsections (7) and (8)) means a parent having parental responsibility.

Interpretation of the Children Act 2009 in relation to adoption.

50.(1) Where—

- (a) the Agency is authorised to place a child for adoption; or
- (b) a child who has been placed for adoption by the Agency is less than six weeks old,

the Minister may by order provide for the following provisions of the Children Act 2009 appearing in subsection (2) to apply with modifications, or not to apply, in relation to the child.

- (2) The provisions of the Children Act 2009 referred to in subsection (1) are—
- (a) section 105(2)(b), (c) and (d) and (3)(b);
 - (b) section 116; and
 - (c) section 132.
- (3) Where a child's home is with persons who have given notice of intention to adopt, no contribution is payable (whether under a contribution order or otherwise) under section 132-135 of the Children Act 2009 in respect of the period referred to in subsection (4).
- (4) The period referred to in subsection (3) begins when the notice of intention to adopt is given and ends if—
- (a) the period of four months beginning with the giving of the notice expires without the prospective adopters applying for an adoption order; or
 - (b) an application for such an order is withdrawn or refused.

Disclosing information during adoption process.

51. The Minister may make regulations to require the Agency in prescribed circumstances to disclose in accordance with the regulations prescribed information to prospective adopters.

Revocation of adoptions on legitimation.

52. Where any child adopted by one natural parent as sole adoptive parent subsequently becomes a legitimated person on the marriage of or formation of a civil partnership by, the natural parents, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke the order.

Disclosure of information in relation to a person's adoption

Information to be kept about a person's adoption.

- 53.(1) In relation to an adopted person, the Minister may by regulations prescribe—
- (a) the information which the Agency must keep in relation to the adopted person's adoption;
 - (b) the form and manner in which the Agency must keep that information.

(2) In this section and sections 54 to 60, any information kept by the Agency by virtue of subsection (1)(a) is referred to as section 53 information.

Restrictions on disclosure of protected information.

54.(1) Any section 53 information kept by the Agency which—

- (a) is about an adopted person or any other person; and
- (b) is or includes identifying information about the person in question,

may only be disclosed by the Agency to a person (other than the person the information is about) subject to the provisions of section 53 to 60.

(2) Any information kept by the Agency—

- (a) which the Agency has obtained from the Registrar of Births and Deaths on an application under section 73(5) and any other information which would enable the adopted person to obtain a certified copy of the record of his birth; or
- (b) which is information about an entry relating to the adopted person in the Adoption and Parental Order Register,

may only be disclosed to a person by the Agency pursuant to the provisions of sections 53 to 60.

(3) The disclosure of information to a person which is restricted by virtue of subsection (1) or (2) is referred to (in relation to that person) as protected information.

(4) Identifying information about a person means information which, whether taken on its own or together with other information disclosed by the Agency, identifies the person or enables the person to be identified.

(5) This section does not prevent the disclosure of protected information in pursuance of a prescribed agreement to which the Agency is a party.

(6) The Minister may authorise or require the Agency to disclose protected information to a person who is not an adopted person.

Disclosure of other information.

55.(1) This section applies to any section 53 information other than protected information.

(2) The Agency may for the purposes of its functions disclose to any person in accordance with prescribed arrangements any information to which this section applies.

(3) The Agency must, in prescribed circumstances, disclose prescribed information to a prescribed person.

(4) A person who discloses any information in contravention of section 54 is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Disclosing information to an adopted adult.

56.(1) This section applies to an adopted person who has attained the age of 18 years.

(2) The adopted person has the right, at their request, to receive from the Agency—

- (a) any information which would enable them to obtain a certified copy of the record of their birth, unless the Supreme Court orders otherwise;
- (b) any prescribed information disclosed to the adopters by the Agency by virtue of section 51.

(3) The Supreme Court may make an order under subsection (2)(a), on an application by the Agency, if satisfied that the circumstances are exceptional.

(4) The adopted person also has the right, at their request, to receive from the court which made the adoption order a copy of any document or order relating to the adoption.

(5) Subsection (4) shall not apply to a document or order so far as it contains information which is protected information.

Disclosing protected information about adults.

57.(1) This section applies where—

- (a) a person applies to the Agency for protected information to be disclosed to them; and
- (b) none of the information is about a person who is a child at the time of the application.

(2) The Agency is not required to proceed with the application unless it considers it appropriate to do so.

(3) If the Agency proceeds with the application referred to in subsection (1) it must take all reasonable steps to obtain the views of any person the information is about as to the disclosure of the information about that person.

(4) The Agency may then disclose the information if it considers it appropriate to do so.

(5) In deciding whether it is appropriate to proceed with the application or disclose the information, the Agency must consider—

- (a) the welfare of the adopted person;
- (b) any views obtained under subsection (3);
- (c) any prescribed matters;

and all the other circumstances of the case.

(6) This section does not apply to a request for information under section 56(2) or to a request for information which the Agency is authorised or required to disclose by virtue of section 54(6).

Disclosing protected information about children.

58.(1) This section applies where—

- (a) a person applies to the Agency for protected information to be disclosed to them; and
- (b) any of the information is about a person who is a child at the time of the application.

(2) The Agency is not required to proceed with the application unless it considers it appropriate to do so.

(3) If the Agency proceeds with the application referred to in subsection (1), then, so far as the information is about a person who is at the time a child, the Agency must take all reasonable steps to obtain—

- (a) the views of any parent or guardian of the child; and
- (b) if the Agency considers it appropriate to do so having regard to his or her age and understanding and to all the other circumstances of the case, the views of the child,

as to the disclosure of the information.

(4) If the information is about a person who has at the time attained the age of 18 years, the Agency must take all reasonable steps to obtain their views as to the disclosure of the information.

(5) The Agency may then disclose the information if it considers it appropriate to do so.

(6) In deciding whether it is appropriate to proceed with the application, or disclose the information, where any of the information is about a person who is at the time a child—

- (a) if the child is an adopted child, the child's welfare must be the paramount consideration;
- (b) in the case of any other child, the Agency must have particular regard to the child's welfare.

(7) In deciding whether it is appropriate to proceed with the application or disclose the information, the Agency must consider—

- (a) the welfare of the adopted person (where subsection (6)(a) does not apply);
- (b) any views obtained under subsection (3) or (4);
- (c) any prescribed matters;

and all the other circumstances of the case.

(8) This section does not apply to a request for information under section 56(2) or to a request for information which the Agency is authorised or required to disclose by virtue of section 54(6).

Counselling.

59.(1) The Agency may provide information about the availability of counselling to persons—

- (a) seeking information from them in pursuance of sections 53 to 60;
- (b) considering objecting or consenting to the disclosure of information by the Agency in pursuance of sections 53 to 60; or
- (c) considering entering with the Agency into an agreement prescribed for the purposes of section 54(5).

(2) The Agency may make arrangements to secure the provision of counselling for persons seeking information from them in pursuance of sections 53 to 60.

- (3) The Agency may—
- (a) disclose information which is required for the purposes of such counselling to the persons providing the counselling;
 - (b) where the person providing the counselling is outside Gibraltar, to require a fee to be paid.

Other provisions to be made by regulations.

60.(1) The Minister may make regulations for the purposes of sections 53 to 60, including provision as to—

- (a) the performance by the Agency of its functions;
 - (b) the manner in which information may be received;
 - (c) the manner in which agreements made by virtue of section 54(5) are to be recorded;
 - (d) the information to be provided by any person on an application for the disclosure of information under sections 53 to 60.
- (2) The Agency may—
- (a) give to prescribed persons prescribed information about the rights or opportunities to obtain information, or to give their views as to its disclosure;
 - (b) seek prescribed information from, or give prescribed information to, the Registrar of Births and Deaths in prescribed circumstances.
- (3) The Minister may authorise the Registrar of Births and Deaths—
- (a) to disclose to any person (including an adopted person) at their request any information which the person requires to assist him or her to make contact with the Agency;
 - (b) to disclose to the Agency any information which the Agency requires about any entry relating to the adopted person on the Adoption and Parental Order Register.

PART IV

Status of adopted children

Meaning of adoption in Part IV.

61. In this Part, “adoption” means—

- (a) adoption by an adoption order;
- (b) an adoption effected under the law of a Convention country outside Gibraltar, and certified in pursuance of Article 23(1) of the Convention (a “Convention adoption”);
- (c) an overseas adoption; or
- (d) an adoption recognised by the law of Gibraltar and effected under the law of any other country;

and related expressions are to be interpreted accordingly.

Status conferred by adoption.

62.(1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.

- (2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by—
 - (a) a couple; or
 - (b) one of a couple under section 46(2);

is to be treated as the child of the relationship of the couple in question.

- (3) An adopted person—
 - (a) if adopted by one of a couple under section 46(2), shall be treated in law as not being the child of any person other than the adopter and the other one of the couple; and
 - (b) in any other case, shall be treated in law, subject to subsection (4), as not being the child of any person other than the adopters or adopter,

but this subsection does not affect any reference in this Act to a person’s natural parent or to any other natural relationship.

(4) In the case of a person adopted by one of the person’s natural parents as sole adoptive parent, subsection (3)(b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.

- (5) This section has effect from the date of the adoption.

- (6) Subject to the provisions of this Part, this section—
- (a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption, and so applies subject to any contrary indication; and
 - (b) has effect as respects things done, or events occurring, on or after the adoption.

Adoptive relatives.

63.(1) For the purposes of this section and sections 65 and 70, a relationship existing by virtue of section 62 may be referred to as an adoptive relationship, and—

- (a) an adopter may be referred to as an adoptive parent or as an adoptive father or adoptive mother;
 - (b) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree.
- (2) Subsection (1) does not affect the interpretation of any reference, not qualified by the word “adoptive”, to a relationship.
- (3) A reference (however expressed) to the adoptive mother and father of a child adopted by—
- (a) a couple of the same sex; or
 - (b) a partner of the child’s parent, where the couple are of the same sex,

is to be read as a reference to the child’s adoptive parents.

Rules of interpretation for instruments concerning property.

64.(1) The rules of interpretation contained in this section apply (subject to any contrary indication) to any instrument so far as it contains a disposition of property.

(2) In applying section 62(1) and (2) to a disposition which depends on the date of birth of a child or children of the parents by virtue of adoption, the disposition is to be interpreted as if—

- (a) the adopted person had been born on the date of adoption;
- (b) two or more people adopted on the same date had been born on that date in the order of their actual births;

but this does not affect any reference to a person’s age.

(3) Section 62(3) does not prejudice—

- (a) any qualifying interest;
- (b) any interest expectant (whether immediately or not) upon a qualifying interest; or
- (c) any contingent interest (other than a contingent interest in remainder) which the adopted person has immediately before the adoption in the estate of a deceased parent, whether testate or intestate.

“Qualifying interest” means an interest vested in possession in the adopted person before the adoption.

(4) In this section, “instrument” includes a private Act settling property, but not any other enactment.

Dispositions depending on date of birth.

65. Where a disposition depends on the date of birth of a person who was born illegitimate and who is adopted by one of the natural parents as sole adoptive parent, section 64(2) does not affect entitlement by virtue of any other enactment relating to dispositions of property.

Protection of trustees and personal representatives.

66.(1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether any adoption has been effected or revoked if that fact could affect entitlement to the property.

(2) A trustee or personal representative is not liable to any person by reason of a conveyance or distribution of the property made without regard to any such fact if he has not received notice of the fact before the conveyance or distribution.

(3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

Meaning of disposition.

67.(1) This section applies for the purposes of this Part.

(2) A disposition includes the conferring of a power of appointment and any other disposition of an interest in or right over property; and in this subsection a power of appointment includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.

(3) This Part applies to an oral disposition as if contained in an instrument made when the disposition was made.

(4) The date of death of a testator is the date at which a will or codicil is to be regarded as made.

(5) The provisions of the law of intestate succession applicable to the estate of a deceased person are to be treated as if contained in an instrument executed by him or her (while of full capacity) immediately before his or her death.

Miscellaneous enactments.

68.(1) Section 62 does not apply for the purposes of—

- (a) section 26 of and Schedule 2 to the Marriage Act or Schedule 1 to the Civil Partnership Act 2014; or
- (b) sections 290 and 291 of the Crimes Act 2011.

(2) Section 62 does not apply for the purposes of any provision of—

- (a) the Immigration, Asylum and Refugee Act and any instrument having effect under it; or
- (b) any other provision of the law for the time being in force which determines British citizenship, British Overseas Territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.

Pensions.

69. Section 62(3) does not affect entitlement to a pension which is payable to or for the benefit of a person and is in payment at the time of the person's adoption.

Insurance.

70.(1) Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an insurance company for the payment on the death of the child of money for funeral expenses; then—

- (a) the rights and liabilities under the policy are by virtue of the adoption transferred to the adoptive parent; and
- (b) for the purposes of the enactments relating to such societies and companies, the adoptive parents are to be treated as the person who took out the policy.

(2) Where the adoption is effected by an order made by virtue of section 46(2), the references in subsection (1) to the adoptive parents are to be read as references to the adopter and the other one of the couple.

PART V
Registers

Adoption and Parental Order Register.

71.(1) The Registrar of Births and Deaths shall continue to maintain and have custody and control of the Adoption and Parental Order Register.

- (2) The Adoption and Parental Order Register is not to be open to public inspection or search.
- (3) No entries may be made in the Adoption and Parental Order Register other than entries—
 - (a) directed to be made in it by adoption orders; or
 - (b) required to be made under Schedule 1.
- (4) A certified copy of an entry in the Adoption and Parental Order Register, if purporting to be sealed or stamped with the seal of the Registrar of Births and Deaths, is to be received as evidence of the adoption to which it relates without further or other proof.
- (5) Where an entry in the Adoption and Parental Order Register contains a record—
 - (a) of the date of birth of the adopted person; or
 - (b) of the country of the birth of the adopted person,

a certified copy of the entry is also to be received, without further or other proof, as evidence of that date, or country in all respects as if the copy were a certified copy of an entry in the registers of births.

- (6) Schedule 1 is to have effect.

Searches and copies.

72.(1) The Registrar of Births and Deaths maintain and have custody and control of an index of the Adoption and Parental Order Register.

- (2) Any person may—
 - (a) search the index;

- (b) have a certified copy of any entry in the Adoption and Parental Order Register.
- (3) A person is not entitled to have a certified copy of an entry in the Adoption and Parental Order Register relating to an adopted person who has not attained the age of 18.
- (4) The terms, conditions and regulations as to payment of fees, and otherwise, applicable under the Births and Deaths Registration Act, in respect of—
 - (a) searches in the index kept in the registry office of certified copies of entries in the registers of births;
 - (b) the supply from that office of certified copies of entries in those certified copies,also apply in respect of searches, and supplies of certified copies, under subsection (2).

Connections between the register and birth records.

73.(1) The Registrar of Births and Deaths must make traceable the connection between any entry in the registers of live-births or other records which has been marked “Adopted” and any corresponding entry in the Adoption and Parental Order Register.

(2) Information kept by the Registrar of Births and Deaths for the purposes of subsection (1) is not to be open to public inspection or search.

(3) Any such information, and any other information which would enable an adopted person to obtain a certified copy of the record of his birth, may only be disclosed by the Registrar of Births and Deaths in accordance with this section.

(4) In relation to a person adopted before the appointed day the court may, in exceptional circumstances, order the Registrar of Births and Deaths to give any information mentioned in subsection (3) to a person.

(5) On an application made by the Agency in respect of an adopted person a record of whose birth is kept by the Registrar of Births and Deaths, the Registrar of Births and Deaths must give the Agency any information relating to the adopted person which is mentioned in subsection (3).

(6) In relation to a person adopted before the appointed day, Schedule 2 applies instead of subsection (5).

(7) On an application made in the prescribed manner by an adopted person a record of whose birth is kept by the Registrar of Births and Deaths and who—

- (a) is under the age of 18 years; and

- (b) intends to be married or form a civil partnership,

the Registrar for Births and Deaths must inform the applicant whether or not it appears from information contained in the registers of births or other records that the applicant and the intended spouse or civil partner may be within the prohibited degrees of relationship for the purposes of the Marriage Act or the Civil Partnership Act 2014.

Adoption Contact Register

Adoption Contact Register.

74.(1) The Registrar of Births and Deaths shall maintain at the registry office a register in two Parts to be called the Adoption Contact Register.

(2) Part 1 of the Adoption Contact Register shall contain information about adopted persons who have given the prescribed notice expressing their wishes as to making contact with their relatives.

(3) The Registrar of Births and Deaths may only make an entry in Part 1 of the Adoption Contact Register for an adopted person—

- (a) a record of whose birth is kept by the Registrar of Births and Deaths;
- (b) who has attained the age of 18 years; and
- (c) who the Registrar of Births and Deaths is satisfied has such information as is necessary to enable him or her to obtain a certified copy of the record of his birth.

(4) Part 2 of the Adoption Contact Register shall contain the information about persons who have given notice expressing their wishes, as relatives of adopted persons, as to making contact with those persons.

(5) The Registrar of Births and Deaths may only make an entry in Part 2 of the Adoption Contact Register for a person—

- (a) who has attained the age of 18 years; and
- (b) who the Registrar of Births and Deaths is satisfied is a relative of an adopted person and has such information as is necessary to enable him or her to obtain a certified copy of the record of the adopted person's birth.

(6) The Adoption Contact Register shall not be open to public inspection or search.

PART VI*Adoptions with a foreign element***Restriction on bringing children into Gibraltar.**

75.(1) This section applies where a person who is habitually resident in Gibraltar (the “Gibraltar resident”)—

- (a) brings, or causes another to bring, a child who is habitually resident outside Gibraltar into Gibraltar for the purpose of adoption by the Gibraltar resident; or
- (b) at any time brings, or causes another to bring, into Gibraltar a child adopted by the Gibraltar resident under an external adoption effected within the period of twelve months ending with that time.

The references to adoption, or to a child adopted, by the Gibraltar resident include a reference to adoption, or to a child adopted, by the Gibraltar resident and another person.

(2) This section does not apply if the child is intended to be adopted under a Convention adoption order.

(3) An external adoption means an adoption, of a child effected under the law of any country or territory outside Gibraltar, whether or not the adoption is—

- (a) an adoption within the meaning of Part IV; or
- (b) a full adoption within the meaning of section 80(3).

(4) In this section, an external adoption shall not mean a Convention adoption.

(5) A person intending to bring, or to cause another to bring, a child into Gibraltar in circumstances where this section applies must—

- (a) apply to the Agency for an assessment of their suitability to adopt the child; and
- (b) give the Agency any information it may require for the purpose of the assessment.

(6) The Minister may make regulations to prescribe conditions to be met in respect of a child brought into Gibraltar in circumstances where this section applies.

(7) In relation to a child brought into Gibraltar for adoption in circumstances where this section applies, the Minister may—

- (a) provide for any provision of Part III to apply with modifications or not to apply;

- (b) if notice of intention to adopt has been given, impose functions in respect of the child on the Agency.
- (8) If a person ('P') who brings, or causes another to bring, a child into Gibraltar at any time in circumstances where this section applies, is guilty of an offence if—
- (a) P has not complied with any requirement imposed by virtue of subsection (5); or
 - (b) any condition required to be met by virtue of subsection (6) is not met.

before that time, or before any later time which may be prescribed.

- (9) A person guilty of an offence under this section is liable—
- (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.

Giving parental responsibility prior to adoption abroad.

76.(1) The Supreme Court may, on an application by persons who the court is satisfied intend to adopt a child under the law of a country or territory outside Gibraltar, make an order giving parental responsibility for the child to them.

(2) An order under this section may not give parental responsibility to persons who the court is satisfied meet those requirements as to domicile, or habitual residence, in Gibraltar which have to be met if an adoption order is to be made in favour of those persons.

(3) An application for an order under this section may not be made unless at all times during the preceding ten weeks the child's home was with the applicant or, in the case of an application by two people, both of them.

(4) Section 41(2) to (4) has effect in relation to an order under this section as it has effect in relation to adoption orders.

(5) Any provision of this Act which refers to adoption orders applies to orders under this section.

Restriction on taking children out of Gibraltar.

77.(1) A child who—

- (a) is a Commonwealth citizen; or

(b) is habitually resident in Gibraltar,

must not be removed from Gibraltar to a place outside Gibraltar for the purpose of adoption unless the prospective adopters have parental responsibility for the child by virtue of an order under section 76.

(2) Removing a child from Gibraltar includes arranging to do so; and the circumstances in which a person arranges to remove a child from Gibraltar include those where the person—

- (a) enters into an arrangement for the purpose of facilitating such a removal of the child;
- (b) initiates or takes part in any negotiations of which the purpose is the conclusion of an arrangement within subsection (2)(a); or
- (c) causes another person to take any step mentioned in subsection (2) (a) or (b),

and an arrangement includes an agreement, whether or not enforceable.

(4) A person who removes a child from Gibraltar in contravention of subsection (1) is guilty of an offence.

(5) A person is not guilty of an offence under subsection (4) of causing a person to take any step mentioned in subsection (3)(a) or (b) unless it is proved that he or she knew or had reason to suspect that the step taken would contravene subsection (1).

(6) Subsection (5) only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(7) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.

Power to modify sections 75 and 77.

78.(1) The Minister may by order provide for section 75(1) to apply with modifications, or not to apply, if—

- (a) the adopters or (as the case may be) prospective adopters are natural parents, natural relatives or guardians of the child in question (or one of them is); or

- (b) the Gibraltar resident in question is a partner of a parent of the child,
and any prescribed conditions are met.
- (2) The Minister may by order provide for section 77(1) to apply with modifications, or not to apply, if—
- (a) the prospective adopters are parents, relatives or guardians of the child in question (or one of them is; or
- (b) the prospective adopter is a partner of a parent of the child;
- and any prescribed conditions are met.

Overseas adoptions

Overseas adoptions.

79.(1) In this Act, “overseas adoption”—

- (a) means an adoption of a description specified in an order made by the Government, being a description of adoptions effected under the law of any country or territory outside Gibraltar;
- (b) does not include a Convention adoption.
- (2) Regulations made by the Government may prescribe the requirements that ought to be met by an adoption of any description effected after the commencement of the regulations for it to be an overseas adoption for the purposes of this Act.
- (3) At any time when such regulations have effect, the Government must exercise its powers under this section so as to secure that subsequently effected adoptions of any description are not overseas adoptions for the purposes of this Act if the Government considers that they are not likely within a reasonable time to meet the prescribed requirements.
- (4) An order under this section may contain provision as to the manner in which evidence of any overseas adoption may be given.
- (5) In this section, “adoption” means an adoption of a child or of a person who was a child at the time the adoption was applied for.

Miscellaneous

Modification of section 62 for Hague Convention adoptions.

80.(1) If the Supreme Court is satisfied, on an application under this section, that each of the conditions in subsection (2) is met in the case of a Convention adoption, it may direct that section 62(3) does not apply, or does not apply to any extent specified in the direction.

- (2) The conditions referred to in subsection (1) are—
- (a) that under the law of the country in which the adoption was effected, the adoption is not a full adoption;
 - (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption or that Gibraltar is not receiving State (within the meaning of Article 2 of the Convention);
 - (c) that it would be more favourable to the adopted child for a direction to be given under subsection (1).

(3) A full adoption is an adoption by virtue of which the child is to be treated in law as not being the child of any person other than the adopters or adopter.

Annulment of overseas adoptions.

81.(1) The Supreme Court may, on an application under this subsection, by order annul a Convention adoption or Convention adoption order on the ground that the adoption is contrary to public policy.

- (2) The Supreme Court may, on an application under this subsection—
- (a) by order provide for an overseas adoption or a determination under section 83 to cease to be valid on the ground that the adoption or determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case; or
 - (b) decide the extent, if any, to which a determination under section 83 has been affected by a subsequent determination under that section.

(3) The Supreme Court may in any proceedings, decide that an overseas adoption or a determination under section 83 is to be treated, for the purposes of those proceedings, as invalid on either of the grounds mentioned in subsection (2)(a).

(4) Subject to the preceding provisions, the validity of an overseas adoption or a determination under section 83 cannot be called in question in proceedings in any court in Gibraltar.

(5) Subject to the preceding provisions, the validity of a Convention adoption or Convention adoption order under section 83 cannot be called in question in proceedings in any court in Gibraltar.

Supplementary provisions in respect of section 81.

82.(1) Any application for an order under section 81 or a decision under subsection (2)(b) or (3) of that section must be made in the prescribed manner and within any prescribed period.

“Prescribed” means prescribed by rules.

(2) No application may be made under section 81(1) in respect of an adoption unless immediately before the application is made—

- (a) the person adopted; or
- (b) the adopters or adopter,

habitually reside in Gibraltar.

(3) In deciding in pursuance of section 81 whether such an authority as is mentioned in section 83 was competent to entertain a particular case, a court is bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to entertain the case.

Overseas determinations and orders.

83.(1) Subsection (2) applies where any authority of the Channel Islands, the Isle of Man or any British Overseas Territory has power under the law of that country or territory—

- (a) to authorise, or review the authorisation of, an adoption order made in that country or territory; or
- (b) to give or review a decision revoking or annulling such an order or a Convention adoption.

(2) If the authority makes a determination in the exercise of that power, the determination is to have effect for the purpose of effecting, confirming or terminating the adoption in question or, as the case may be, confirming its termination.

(3) Subsection (2) is subject to section 81 and to any subsequent determination having effect under that subsection.

(4) Subsection (2) shall also apply in respect of the authority of a Convention country (other than Gibraltar).

PART VII
Miscellaneous

Restriction on arranging adoptions.

84.(1) A person who is neither the Agency, an adoption agency nor acting in pursuance of an order of the Supreme Court must not-

- (a) ask a person other than the Agency or an adoption agency to provide a child for adoption;
- (b) ask a person other than the Agency or an adoption agency to provide prospective adopters for a child;
- (c) offer to find a child for adoption;
- (d) offer a child for adoption to a person other than the Agency or an adoption agency;
- (e) hand over a child to any person other than the Agency or an adoption agency with a view to the child's adoption by that or another person;
- (f) receive a child handed over to him or her in contravention of subsection (1)(e);
- (g) enter into an agreement with any person for the adoption of a child, or for the purpose of facilitating the adoption of a child, where the Agency or an adoption agency is not acting on behalf of the child in the adoption;
- (h) initiate or taking part in negotiations of which the purpose is the conclusion of an agreement within subsection (1)(g);
- (i) cause another person to take any of the steps mentioned in subsections(1)(a) to (h).

(2) Subsection (1) does not apply to a person taking any of the steps mentioned in subsections (1) (d), (e), (g), (h) and (i) if-

- (a) the prospective adopters or one of them are parents or guardians of the child; or
- (b) the prospective adopter is the partner of a parent of the child.

(3) References to an adoption agency in subsection (1) shall include a prescribed person outside Gibraltar exercising functions corresponding to those of the Agency, if the functions are being exercised in prescribed circumstances in respect of the child in question.

(4) The Minister may, by order make any amendments of subsections (1) to (3), and any consequential amendments of this Act, which the Minister considers necessary or expedient.

Offence of breaching restrictions under section 84.

85.(1) If a person contravenes section 84(1), they are guilty of an offence; and, if that person is the Agency or an adoption agency, the person who manages the Agency or the adoption agency is also guilty of the offence.

(2) A person is not guilty of an offence under subsection (1) of taking the step mentioned in section 84(1)(f) unless it is proved that he or she knew or had reason to suspect that the child was handed over to him or her in contravention of section 84(1)(e).

(3) A person is not guilty of an offence under subsection (1) of causing a person to take any of the steps mentioned in section 84(1)(a) to (h) unless it is proved that he or she knew or had reason to suspect that the step taken would contravene the section in question.

(4) Subsections (2) and (3) only apply if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

Restriction on reports.

86.(1) A person who is not within a prescribed description may not prepare a report for any person about the suitability of a child for adoption or of a person to adopt a child or about the adoption, or placement for adoption, of a child.

(2) If a person—

(a) contravenes subsection (1); or

(b) causes a person to prepare a report, or submits to any person a report which has been prepared, in contravention of that subsection,

that person is guilty of an offence.

(3) A person is not guilty of an offence under subsection (2)(b) unless it is proved that he or she knew or had reason to suspect that the report would be, or had been, prepared in contravention of subsection (1) but this subsection only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

Prohibition of certain payments.

87.(1) This section applies to any payment (other than an excepted payment) which is made for or in consideration of—

- (a) the adoption of a child;
- (b) giving any consent required in connection with the adoption of a child;
- (c) removing from Gibraltar a child who is a Commonwealth citizen, or is habitually resident in Gibraltar, to a place outside Gibraltar for the purpose of adoption;
- (d) a person who is neither an adoption agency nor acting in pursuance of an order of the Supreme Court taking any step mentioned in section 84(2);
- (e) preparing, causing to be prepared or submitting a report the preparation of which contravenes section 86(1).

(2) In this section and section 88, removing a child from Gibraltar has the same meaning as in section 77.

(3) Any person who—

- (a) makes any payment to which this section applies;
- (b) agrees or offers to make any such payment; or
- (c) receives or agrees to receive or attempts to obtain any such payment;

is guilty of an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

Excepted payments.

88.(1) A payment is an excepted payment if it is made by virtue of, or in accordance with provision made by or under, this Act.

(2) A payment is an excepted payment if it is made to an adoption agency by—

- (a) a parent or guardian of a child; or

(b) a person who adopts or proposes to adopt a child;

in respect of expenses reasonably incurred by the adoption agency in connection with the adoption or proposed adoption of the child.

(3) A payment is an excepted payment if it is made in respect of any legal or medical expenses incurred or to be incurred by any person in connection with an application to a court which they have made or proposes to make for an adoption order, a placement order, or an order under section 21, 47 or 76.

(4) A payment made as mentioned in section 87(1)(c) is an excepted payment if—

- (a) the condition in section 77 is met; and
- (b) the payment is made in respect of the travel and accommodation expenses reasonably incurred in removing the child from Gibraltar for the purpose of adoption.

Proceedings

Privacy.

89. Proceedings under this Act in the Supreme Court may be heard and determined in private.

Guardian Ad Litem

Appointment of Guardian Ad Litem.

90.(1) For the purposes of any relevant application made under this Act in respect of a child, the court must provide for the appointment of a guardian ad litem.

(2) The court may direct for the appointment of a guardian ad litem in other circumstances where it appears to the court to be necessary or expedient to do so.

(3) The guardian ad litem—

- (a) shall act on behalf of the child upon the hearing of any relevant application, with the duty of safeguarding the interests of the child;
- (b) where the court so requests, prepare a report on matters relating to the welfare of the child in question;
- (c) where appropriate, shall be advised and represented by counsel, in any such proceedings;

- (d) pursuant to its appointment under subsection (2) shall comply with any direction given by the court.
- (4) A report prepared in pursuance of subsection (3)(b) relating to the welfare of a child must be made in the manner required by the court.
- (5) A person who—
- (a) in the case of an application for the making, varying or revocation of a placement order, is employed by the Agency which made the application;
 - (b) in the case of an application for an adoption order in respect of a child who was placed for adoption, is employed by the Agency; or
 - (c) is within a prescribed description,
- is not to be appointed under subsection (1) or (2).
- (6) In this section, “relevant application” means an application for—
- (a) the making, varying or revocation of a placement order;
 - (b) the making of an order under section 21, or the varying or revocation of such an order;
 - (c) the making of an adoption order; or
 - (d) the making of an order under section 76.

Witnessing of documents.

91. An officer of the court or the legal representatives of the parties to a relevant application may witness documents which signify consent to placement or adoption.

Right of guardian ad litem to have access to Agency records.

92.(1) Where a guardian ad litem has been appointed to act under section 90(1), they shall have the right at all reasonable times to examine and take copies of any records of, or held by, the Agency which were compiled in connection with the making, or proposed making, by any person of any application under this Part in respect of the child concerned.

(2) Where a guardian ad litem takes a copy of any record which he or she is entitled to examine under this section, that copy or any part of it is admissible as evidence of any matter referred to in any—

- (a) report which they make to the court in the proceedings in question; or
 - (b) evidence which they give in those proceedings.
- (3) Subsection (2) has effect regardless of any enactment or rule of law which would otherwise prevent the record in question being admissible in evidence.

Evidence

Evidence of consent.

93.(1) If a document signifying any consent which is required by this Part to be given is witnessed in accordance with rules it is to be admissible in evidence without further proof of the signature of the person by whom it was executed.

(2) A document signifying any such consent which purports to be witnessed in accordance with rules is to be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

General

Avoiding delay.

94.(1) In proceedings in which a question may arise as to whether an adoption order or placement order should be made, or any other question with respect to such an order, the court must (subject to any provision in rules of court that is of the kind mentioned in subsection (2)(a) or (b))—

- (a) draw up a timetable with a view to determining such a question without delay; and
 - (b) give such directions as it considers appropriate for the purpose of ensuring that the timetable is adhered to.
- (2) The court may—
- (a) prescribe periods within which prescribed steps must be taken in relation to such proceedings; and
 - (b) make other provision with respect to such proceedings for the purpose of ensuring that such questions are determined without delay.

Service of notices.

95. Any notice or information required to be given by virtue of this Act may be given by post.

PART VIII*Miscellaneous and final provisions***Restriction on advertisements.**

96.(1) A person must not—

- (a) publish or distribute an advertisement or information to which this section applies;
or
- (b) cause such an advertisement or information to be published or distributed.

(2) This section applies to an advertisement indicating that—

- (a) the parent or guardian of a child wants the child to be adopted;
- (b) a person wants to adopt a child;
- (c) a person other than the Agency or an adoption agency is willing to take any step mentioned in section 84(1)(a) to (e), (g) and (h) and (so far as relating to those subsections) section 84(1)(i);
- (d) a person other than the Agency or an adoption agency is willing to receive a child handed over to him or her with a view to the child's adoption by him, her or another; or
- (e) a person is willing to remove a child from Gibraltar for the purposes of adoption.

(3) This section applies to—

- (a) information about how to do anything which, if done, would constitute an offence under section 77 or 85, (whether or not the information includes a warning that doing the thing in question may constitute an offence);
- (b) information about a particular child as a child available for adoption.

(4) For the purposes of this section and section 97—

- (a) publishing or distributing an advertisement or information means publishing it or distributing it to the public and includes doing so by electronic means (for example, by means of the internet);
- (b) the public includes selected members of the public as well as the public generally or any section of the public.

(5) Subsection (1) does not apply to publication or distribution by or on behalf of the Agency or an adoption agency.

(6) The Minister may by order amend this section if the Minister considers it necessary or expedient in consequence of any developments in technology relating to publishing or distributing advertisements or other information by electronic or electro-magnetic means.

(7) References to an adoption agency in this section include a prescribed person outside Gibraltar exercising functions corresponding to those of the Agency, if the functions are being exercised in prescribed circumstances.

Offence of breaching restriction under section 96.

97.(1) A person who contravenes section 96(1) is guilty of an offence.

(2) A person is not guilty of an offence under this section unless it is proved that he knew or had reason to suspect that section 96 applied to the advertisement or information. This subsection only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

Adoption Act Register

Adoption Act Register.

98.(1) The Minister may establish and maintain a register, to be called the Adoption Act Register, containing—

- (a) information about children who are suitable for adoption, children for whom the Agency are considering adoption and prospective adopters who are suitable to adopt a child;
- (b) information about persons included in the register in pursuance of subsection (1)(a) in respect of things occurring after their inclusion;
- (c) information about children who the Agency is satisfied are suitable for adoption;
- (d) information about prospective adopters who the Agency is satisfied are suitable to adopt a child;

- (e) information about persons included in the register in pursuance of subsection (1)(c) or (d) in respect of things occurring after their inclusion.

(2) For the purpose of giving assistance in finding persons with whom children may be placed for purposes other than adoption, the register may contain information about such persons and the children who may be placed with the Agency.

(3) The register is not to be open to public inspection or search.

(4) Information is to be kept in the register in any form the Minister considers appropriate.

Supply of information for the register.

99.(1) The Agency or an adoption agency may give information to the Minister for entry in the register.

- (2) The Agency or an adoption agency is not to disclose any information to the Minister—
 - (a) about prospective adopters who are suitable to adopt a child, or persons who were included in the register as such prospective adopters, without their consent;
 - (b) about children suitable for adoption or for whom the Agency are considering adoption, or persons who were included in the register as such children, without the consent of the person.

Disclosure of information.

100.(1) Information entered in the register, or compiled from information entered in the register, may only be disclosed under subsection (2).

- (2) Information entered in the register may be disclosed by the Minister—
 - (a) to the Agency to assist in finding prospective adopters with whom it would be appropriate for the child to be placed;
 - (b) where an adoption agency is acting on behalf of prospective adopters who are suitable to adopt a child, to the Agency to assist in finding a child appropriate for adoption by them.

(3) Information entered in the register, or compiled from information entered in the register, may be disclosed by the Minister to any person for use for statistical or research purposes, or for other prescribed purposes.

(4) If any information entered in the register is disclosed to a person in contravention of subsection (1), the person disclosing it is guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

Final provisions

Rules of procedure.

101.(1) Family procedure rules may make provision in respect of any matter to be prescribed by rules made by virtue of this Act and dealing generally with all matters of procedure.

(2) In the case of an application for a placement order, for the variation or revocation of such an order, or for an adoption order, the rules must require any person mentioned in subsection (3) to be notified—

- (a) of the date and place where the application will be heard; and
 - (b) of the fact that, unless the person wishes or the court requires, the person need not attend.
- (3) The persons referred to in subsection (2) are—
- (a) in the case of a placement order, every person who can be found whose consent to the making of the order is required under subsection (3)(a) of section 17 (or would be required but for subsection (3)(b) of that section) or, if no such person can be found, any relative prescribed by rules who can be found;
 - (b) in the case of a variation or revocation of a placement order, every person who can be found whose consent to the making of the placement order was required under subsection (3)(a) of section 17 (or would have been required but for subsection (3)(b) of that section);
 - (c) in the case of an adoption order—
 - (i) every person who can be found whose consent to the making of the order is required under subsection (2)(a) of section 42 (or would be required but for subsection (2)(c) of that section) or, if no such person can be found, any relative prescribed by rules who can be found;
 - (ii) every person who has consented to the making of the order under section 16 (and has not withdrawn the consent) unless he or she has given a notice under subsection (4)(a) of that section which has effect;

- (iii) every person who, if permission were given under section 42(5), would be entitled to oppose the making of the order.

(4) Rules may, for the purposes of the law relating to contempt of court, authorise the publication in such circumstances as may be specified of information relating to proceedings held in private involving children.

Offences by bodies corporate and unincorporated bodies.

102.(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, that person as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with their functions of management as it applies to a director of a body corporate.

(3) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings in Gibraltar, any rules of court relating to the service of documents have effect as if that body were a corporation.

(4) A fine imposed on an unincorporated body on its conviction of an offence under this Act is to be paid out of the funds of that body.

(5) Where an offence under this Act committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, he or she as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he or she as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

Repeal, transitional & saving provisions and consequential amendments

Extent.

103. The amendment or repeal of an enactment has the same extent as the enactment to which it relates.

Repeal.

104. The Adoption Act 1951 is repealed and the repeal by this Act of the Adoption Act 1951 does not affect any right or cause of action that has accrued to, or any legal claim commenced by, any person before those provisions were repealed.

Continuity of the law.

105.(1) The substitution of this Act for a repealed enactment does not affect the continuity of the law.

(2) A reference (whether express or implied) in this Act, another enactment, an instrument or document to a provision of this Act is, subject to its context, to be read as being or including a reference to the corresponding provision of a repealed enactment, in relation to times, circumstances or purposes to which the repealed provision had effect.

(3) A reference (whether express or implied) in any enactment, instrument or document to a provision of a repealed enactment is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act, in relation to times, circumstances or purposes to which that provision has effect.

(4) Anything done, or having effect as if done, under (or for the purposes of or in reliance on) a provision of a repealed enactment, and in operation or effective immediately before the coming into operation of this Act, has effect after that date as if done under (or for the purposes of or in reliance on) the corresponding provision of this Act.

(5) Subsection (4) does not apply to the making of any subsidiary legislation to the extent that it is reproduced in this Act.

(6) Any reference to a provision of a repealed enactment which is contained in a document made, served or issued after the repeal comes into operation is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act.

(7) This section has effect subject to any express amendment or specific transitional provision or saving made by or under this Act.

Consequential Amendments.

106.(1) In the Administration of Estates Act, in section 49(3)(b), the words “as defined in section 4(3) of the Adoption Act 1968” are replaced with “as defined in the Adoption Act 2022.”

(2) The Adoption (Magistrates Court) Rules are hereby revoked.

(3) In the Births and Deaths Registration Act, in section 8(a), the reference to the “Adoption Act” is replaced with “Adoption Act 2022”.

(4) In the Children Act 2009-

- (a) the reference to the “Adoption Act” in section 25(4)(b) is replaced with “Adoption Act 2022”;
- (b) the reference to the “Adoption Act” in section 29(3)(a) is replaced with “Adoption Act 2022”;
- (c) the reference to the “Adoption Act” in section 125(10) is replaced with “Adoption Act 2022”;
- (d) the reference to the “Adoption Act” in section 25(4)(b) is replaced with “Adoption Act 2022”.

(5) In the Civil Partnership Act 2014, in Schedule 2 Part I, the references to the “Adoption Act” are replaced with “Adoption Act 2022”.

(6) In the Contract and Tort Act, in section 6(7), in the definition of “adopted” the reference to the “Adoption Act” is replaced with “Adoption Act 2022”.

(7) In the Crimes Act 2011-

- (a) section 185(5)(b) is replaced with “an order under section 78 the Adoption Act 2022 relating to adoption abroad, or of a pending application for such an order;”;
- (b) in section 232(b), the reference to the “Adoption Act” is replaced with “Adoption Act 2022”;
- (c) in section 290(3), the reference to the “Adoption Act” in the definition of “child” is replaced with “Adoption Act 2022”;
- (d) in section 291(3), the reference to the “Adoption Act” in the definition of “child” is replaced with “Adoption Act 2022”.

(8) In the Family Proceedings (Children) (1996 Hague Convention) Rules 2011-

- (a) section 16(7)(d) is replaced in its entirety with “pursuant to section 73 and schedule 1 of the Adoption Act 2022, the proposed new name of the child.”;
- (b) in section 32(b)(i) the reference to the “adoption Act” is replaced with “Adoption Act 2022”.

(9) In the Lasting Powers of Attorney and Capacity Act 2018 in section 3(1), the reference to “Adoption Act” in the definition of “adoption order” is replaced with “Adoption Act 2022”.

(10) In the Magistrates’ Court Act, the reference to the “Adoption Act” in section 45(d) is replaced with “Adoption Act 2022”.

(11) In the Maintenance Act, the reference to the “Adoption Act” in section 2 in the definition of “child” is replaced with “Adoption Act 2022”.

(12) In the Matrimonial Causes Act, the reference to the “Adoption Act (Act. 1951 No.19)” in section 48(2) is replaced with “Adoption Act 2022”.

(13) In the Mental Health Act 2016, the definition of “adoption order” in section 78(2) is replaced with-

““adoption order” has the meaning given to it in section 3 of the Adoption Act 2022”.

(14) In the Social Security (Closed Long-Term Benefits and Scheme) Act 1996, in section 2(4)(c) the reference to the “Adoption Act (Act. 1951 No.19)” is replaced with “Adoption Act 2022”.

(15) In the Social Security (Closed Long-Term Benefits) Regulations 1996, in section 14, the reference to the “Adoption Act” is replaced with “Adoption Act 2022”.

(16) In the Social Security (Insurance) Act, in section 2(4)(c) the reference to the “Adoption Act (Act. 1951 No.19)” is replaced with “Adoption Act 2022”.

(17) In the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act, in section 2(2)(c) the reference to the “Adoption Act” is replaced with “Adoption Act 2022”.

(18) In the Social Security (Open Long-Term Benefits and Scheme) Act 1997, in section 2(4)(c) the reference to the “Adoption Act (Act. 1951 No.19)” is replaced with “Adoption Act 2022”.

(19) In the Social Security (Open Long-Term Benefits) Regulations 1997, in section 14, the reference to the “Adoption Act” is replaced with “Adoption Act 2022”.

(20) In the Surrogacy Act 2021-

(a) in section 13(4)(a) the reference to “The Adoption Act” is replaced with “The Adoption Act 2022;”;

(b) in section 23(4) the reference to the “Adoption Act” is replaced with “Adoption Act 2022”.

SCHEDULE 1

Section 71

Registration of adoptions

Registration of adoption orders.

1.(1) Every adoption order must contain a direction to the Registrar of Births and Deaths to make in the Adoption and Parental Order Register an entry.

(2) Where, on an application to a court for an adoption order in respect of a child, the identity of the child with a child to whom an entry in the registers of births or other records relates is proved to the satisfaction of the court, any adoption order made in pursuance of the application must contain a direction to the Registrar of Births and Deaths to secure that the entry in the register or, as the case may be, record in question is marked with the word “Adopted”.

(3) Where an adoption order is made in respect of a child who has previously been the subject of an adoption order made by a court in Gibraltar under Part 1 of this Act or any other enactment—

- (a) sub-paragraph (2) does not apply; and
- (b) the order must contain a direction to the Registrar of Births and Deaths to mark the previous entry in the Adoption and Parental Order Register with the word “Re-adopted”.

(4) Where an adoption order is made, an officer of the court which made the order must communicate the order to the Registrar of Births and Deaths; and the Registrar of Births and Deaths must then comply with the directions contained in the order.

(5) If an entry in the registers of births or other records (and no entry in the Adoption and Parental Order Register) relates to the child, the Registrar of Births and Deaths must secure that the entry is marked with—

- (a) the word “Adopted”; followed by
- (b) the name, in brackets, of the part in which the order was made.

(6) If an entry in the Adoption and Parental Order Register relates to the child, the Registrar of Births and Deaths must mark the entry with—

- (a) the word “Re-adopted”; followed by
- (b) the name, in brackets, of the part in which the order was made.

(7) Where, after an entry in either of the registers or other records mentioned in sub-paragraphs (2) and (3) has been so marked, the Registrar of Births and Deaths is notified by the court that—

- (a) the order has been quashed;
- (b) an appeal against the order has been allowed; or
- (c) the order has been revoked;

the Registrar of Births and Deaths must secure that the marking is cancelled.

(8) A copy or extract of an entry in any register or other record, being an entry the marking of which is cancelled under sub-paragraph (4), is not to be treated as an accurate copy unless both the marking and the cancellation are omitted from it.

Registration of other adoptions.

2.(1) If the Registrar of Births and Deaths is satisfied, on an application under this paragraph, that they have sufficient particulars relating to a child adopted under a registrable foreign adoption to enable an entry to be made in the Adoption and Parental Order Register for the child they must make the entry accordingly.

(2) If the Registrar of Births and Deaths is also satisfied that an entry in the registers of births or other records relates to the child, they must—

- (a) secure that the entry is marked “Adopted”, followed by the name, in brackets, of the country in which the adoption was effected; or
- (b) where appropriate, secure that the overseas registers of births are so marked.

(3) An application under this paragraph must be made, in the prescribed manner, by a prescribed person and the applicant must provide the prescribed documents and other information.

(4) An entry made in the Adoption and Parental Order Register by virtue of this paragraph must be made in the prescribed form.

(5) In this Schedule “registrable foreign adoption” means an adoption which satisfies prescribed requirements and is—

- (a) adoption under a Convention adoption; or
- (b) adoption under an overseas adoption.

Amendment of orders and rectification of Registers and other records.

3.(1) The court by which an adoption order has been made may, on the application of the adopter or the adopted person, amend the order by the correction of any error in the particulars contained in it.

(2) The court by which an adoption order has been made may, if satisfied on the application of the adopter or the adopted person that within the period of one year beginning with the date of the order any new name—

- (a) has been given to the adopted person (whether in baptism or otherwise); or
- (b) has been taken by the adopted person,

either in place of or in addition to a name specified in the particulars required to be entered in the Adoption and Parental Order Register in pursuance of the order, amend the order by substituting or, as the case may be, adding that name in those particulars.

(3) The court by which an adoption order has been made may, if satisfied on the application of any person concerned that a direction for the marking of an entry in the registers of births, the Adoption and Parental Order Register or other records included in the order in pursuance of paragraph 1(2) or (3) was wrongly so included, revoke that direction.

(4) Where an adoption order is amended or a direction revoked under sub-paragraphs (1) to (3), an officer of the court must communicate the amendment in the prescribed manner to the Registrar of Births and Deaths.

(5) The Registrar of Births and Deaths must then—

- (a) amend the entry in the Adoption and Parental Order Register accordingly, or
- (b) secure that the marking of the entry in the registers of births, the Adoption and Parental Order Register or other records is cancelled.

(6) Where an adoption order is quashed or an appeal against an adoption order is allowed by any court, the court must give directions to the Registrar of Births and Deaths to secure the cancellation of—

- (a) any entry in the Adoption and Parental Order Register; and
- (b) any marking of an entry in that Register, the registers of births or other records as the case may be, which was effected in pursuance of the order.

(7) Where an adoption order has been amended, any certified copy of the relevant entry in the Adoption and Parental Order Register which may be issued pursuant to section 72(2)(b) must be a copy of the entry as amended, without the reproduction of—

- (a) any note or marking relating to the amendment; or
- (b) any matter cancelled in pursuance of it.

(8) A copy or extract of an entry in any register or other record, being an entry the marking of which has been cancelled, is not to be treated as an accurate copy unless both the marking and the cancellation are omitted from it.

(9) If the Registrar of Births and Deaths is satisfied—

- (a) that a registrable foreign adoption has ceased to have effect, whether on annulment or otherwise; or
- (b) that any entry or mark was erroneously made in pursuance of paragraph 2 in the Adopted Children Register, the registers of births, the overseas registers of births or other records,

they may secure that such alterations are made in those registers or other records as they consider are required in consequence of the adoption ceasing to have effect or to correct the error.

(10) Where an entry in such a register is amended in pursuance of sub-paragraph (9), any copy or extract of the entry is not to be treated as accurate unless it shows the entry as amended but without indicating that it has been amended.

Marking of entries on re-registration of birth on legitimation.

4.(1) Without prejudice to paragraphs 1(4) and 3(5), where, after an entry in the registers of births or other records has been marked in accordance with paragraph 1, the birth is re-registered under the Births and Deaths Registration Act, the entry made on the re-registration must be marked in the like manner.

(2) Without prejudice to paragraph 3(9), where an entry in the registers of births or other records is marked in pursuance of paragraph 2 and the birth in question is subsequently re-registered under that Act, the entry made on re-registration must be marked in the like manner.

Cancellations in registers on legitimation.

5.(1) This paragraph applies where an adoption order is revoked under section 52.

(2) An officer of the court must communicate the revocation in the prescribed manner to the Registrar of Births and Deaths who must then cancel or secure the cancellation of—

- (a) the entry in the Adoption and Parental Order Register relating to the adopted person; and
- (b) the marking with the word “Adopted” of any entry relating to the adopted person in the registers of births or other records.

(3) A copy or extract of an entry in any register or other record, being an entry the marking of which is cancelled under this paragraph, is not to be treated as an accurate copy unless both the marking and the cancellation are omitted from it.

SCHEDULE 2

Section 73

Disclosure of birth records by Registrar of Births and Deaths

1. On an application made by an adopted person—

- (a) a record of whose birth is kept by the Registrar of Births and Deaths; and
- (b) who has attained the age of 18 years,

the Registrar of Births and Deaths must give the applicant any information necessary to enable the applicant to obtain a certified copy of the record of their birth.

2.(1) Before giving any information to an applicant under paragraph 1, the Registrar of Births and Deaths must inform the applicant that counselling services are available to the applicant from the Agency.

(2) If the applicant chooses to receive counselling from the Agency, the Registrar of Births and Deaths must send to the person or body the information to which the applicant is entitled under paragraph 1.

3. Where an adopted person who is habitually resident in Gibraltar applies for information under paragraph 1 the Agency must, if asked by the applicant to do so, provide counselling for the applicant.