

Analysis of uk adoption law



**ASSIGN
BUSTER**

“ Critically analyse the law relating to adoption.”

Adoption in this jurisdiction is “ entirely the creature of statute” ^[1] . It was introduced by the Adoption of Children Act 1926 and is currently regulated by the Adoption and Children Act 2002 (replacing the outdated Adoption Act 1976) which after a lengthy period of gestation and passage through Parliament received Royal Assent on 7th November 2002.

While the basic principle of adoption endures (“ the legal process whereby a court irrevocably extinguishes the legal ties between a child and the natural parents or guardians and creates analogous ties between the child and the adopters” ^[2]) the character of adoption has changed from being predominantly a mechanism for the care of orphans and the abandoned. Contraception, abortion and the reduction of the stigma of single parenthood has given rise to the contemporary situation in which there are relatively few “ unwanted” babies and adoption is most frequently a means of relocating children who are at risk or otherwise disadvantaged by their circumstances. Adoption may therefore now be regarded as a species of social engineering. The law has developed to meet the challenges of this new role.

In 2000, the Prime Minister declared the Government’s commitment to modernising adoption and commissioned a report from the Performance and Innovation Unit ^[3] . This led to a White Paper ^[4] and the current legislation. The 2002 Act toughens emphasis upon the welfare of the child. Whereas s. 6 of the Adoption Act 1976 required that “ first consideration” be given to the need to safeguard and promote welfare during childhood, s. 1 of the 2002 Act provides:

“[W]henever a court or adoption agency is coming to a decision relating to the adoption of a child the *paramount* [emphasis supplied] consideration... must be the child’s welfare, throughout his life.”

The Performance and Innovation Unit (*Op. Cit.*, Executive Summary, para. 6) highlighted the concern that “ the lack of adopters is a key constraint in achieving an increase in the number of adoptions and it is clear that more people with the right skills need to be encouraged and supported”.

Controversially, this has led to the ability of unmarried couples to adopt. A similar acknowledgement of the changing social landscape is found in the manner in which modern legislation addresses transnational adoptions. The “ shortage of babies” and legitimate compassion for the plight of children in poor or repressive regimes had led to a dramatic increase in adoptions of children from overseas giving rise to concerns that “ baby-trafficking” and even sales of infants were occurring resulting in inappropriate placements. Accordingly, the Adoption of Children from Overseas Regulations 2000 introduced a strict control framework under which local authorities must be notified of the entry of such a child into the country within a prescribed period. The child remains the subject of a private foster placement and thus under the supervision and control of the local authority with the latter under a duty to investigate and report to the court prior to the granting of an adoption order.

Another step-change in the development of adoption law is to be found in the contemporary approach to the maintenance of contact with birth families. Historically, adoption had been a secretive process involving the total severance of contact with natural parents. While the right of the child to

obtain knowledge of his natural parents and even, in due course, seek contact has long been recognised, there has been a signal lack of a countervailing right on the part of such parents. Recent studies have recognised the legitimate need of parents to know that the adoption to which they consented was successful ^[5]. Accordingly, it is now established that adoption plans should include arrangements for maintaining links with birth families where appropriate ^[6]. Nonetheless, a tension remains: although courts are empowered when making an adoption order to make a contact order under s. 8 of the Children Act 1989, this never occurs in practice where there is resistance from the adoptive parents. Essentially, therefore, the continuation of contact remains in the gift of the adoptive parents.

Similarly, a more relaxed approach is taken to the issue of adoption by relatives. Traditionally, this had been opposed on the grounds that family relationships might become distorted and it was considered that a residence order would always be the better alternative. However, s. 1(6) of the 2002 Act now requires adoption to be the better option and controls are introduced equivalent to those to which “strangers” are subject.

The 2002 legislation has also further developed the principle of “freeing” for adoption. This means of eliminating distressing contests with birth parents was first enacted by s. 14 of the Children Act 1975 but not in fact implemented until 1984. The 2002 Act abolishes the previous freeing regime and empowers agencies to place children for adoption with parental consent. It is now possible for effective consent to adoption to be given at an early stage and a court is now longer required to approve such consent before an

adoption order is made. The role of agencies in this process is enhanced. The effect of consent to placement for adoption is analogous to the making of a care order: parental responsibility is not extinguished but its exercised can be controlled by the agency. The emphasis of the new regime is upon ensuring that agencies diligently carry out their duty of appropriately matching the child and establishing with care that adoption is the subject of an independent and fully informed decision by the birth parent. A corollary of this is that consent to placement and adoption must now be witnessed by a CAFCASS officer (s. 104).

In parallel with the development of adoption law is the use and consequent regulation of surrogacy as a means of alleviating the consequences of infertility. Profit-making arrangements for both surrogacy and adoption are illegal. Adoption law has a part to play in that the commissioning parents can only acquire the legal status of parent by a court order analogous to those made in adoptions or indeed by adoption itself. It appears inevitable that adoption law will further develop to encompass surrogacy: there is a particular need to regulate agencies in the latter field in the manner that adoption agencies are currently controlled.

Thus adoption law, while “ a creature of statute” is a living and constantly evolving being, ever adapting to the changing social circumstances and *mores* of the times.

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Footnotes

[1] Cretney, S., Masson, J. & Bailey-Harris, R., *Principles of Family Law*, (7th Ed., 2003), 23-001

[2] *Ibid.*, p. 791

[3] Performance and Innovation Unit, *Prime Minister's review of Adoption*, July 2000, www.number-10.gov.uk/su/adoption

[4] *Adoption: a new approach*, (2000), Cm. 5017

[5] Howe, D. & Feast, J., *Adoption, Search and Reunion* (2000)

[6] Adoption Standards (2001) Standard A11, C4, D7