

ADOPTION BILL 2021
EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the member in charge of the Bill, Hon. David Ashford MHK.

INTRODUCTION

1. These explanatory notes relate to the Adoption Bill 2021 ("the Bill"). They have been prepared in order to assist the reader. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. These notes should be read in conjunction with the Bill. They are not a comprehensive description of the Bill.

BACKGROUND

3. The Department of Health and Social Care has recognised the need to update adoption legislation for some time. As such, it has been on the Department's legislative programme since 2014. Policy was established, which included Stakeholder input and a Bill drafted.
4. A public consultation on the draft Bill ran from 14 September 2020 until 23 October 2020. The proposals in the Bill were on the whole supported, save for a few areas of misunderstanding which were addressed in a Consultation Response.

FINANCIAL IMPLICATIONS

5. It is not believed that this Bill will increase public expenditure or decrease public revenue.

NOTES ON CLAUSES

Part 1 – Introductory

Clause 1 – Short Title

6. **Part 1** introduces the Bill with *clause 1* setting out the short title that the Bill will have when passed.

Clause 2 - Commencement

7. *Clause 2* provides for the commencement of the Bill on a day or days as the Department may appoint by order, subject to any agreed incidental, supplemental, transitional and transitory provision.

Part 2 – The Adoption Service

Clause 3 - Introductory

8. **Part 2** of the Bill sets out the provisions relating to the Adoption Service with *clause 3* stating what this part deals with.

Clause 4 – The Adoption Service

9. *Clause 4 (1)* defines the adoption service as services maintained by the Department.
10. *Clause 4 (2)* states that a registered adoption society is to treated as registered in terms of adoption services unless it is a condition of its registration that it does not provide that facility.

Clause 5 – Maintenance of Adoption Service

11. *Clause 5* deals with maintenance of the Adoption Service. Under *subsection (1)*, the Department must continue to provide within the Island, a service designed to meet the needs of children who may be adopted, their parents and guardians, persons wishing to adopt a child and adopted persons, their parents, natural parents and former guardians. Facilities must include making and participating in arrangements for the adoption of

children and arrangements for the provision of adoption support services (*subsections (2) (a) and (b)*).

12. *Subsection (3)* provides a duty to make arrangements for the provision of adoption support services to the persons who are of a description prescribed in regulations. The Department may also extend those services to other persons.
13. The Department may meet their duty to provide services by ensuring that they are provided by an adoption agency or a person of a description as may be specified in regulations (*subsection (4), (a) and (b)*).
14. *Subsection (5)* states that the Adoption Service must be provided in conjunction with other social and care services, to include on-Island adoption agencies, avoiding any duplication, omission or delay. This is to ensure a unified cross-organisational approach. *Subsection (6)* states what the social services functions are within the meaning of the Children and Young Persons Act 2001 ("the 2001 Act") and the Social Services Act 2011.

Clause 6 – Joint arrangements etc.

15. *Clause 6* enables the Department to make arrangements for some of its functions to be carried out on its behalf by an adoption agency or agencies. The functions referred to include the recruitment, assessment, approval and decision making in relation to persons adopting a child and the provision of adoption support services. Arrangements may make different provision for different purposes and the Department has the ability by regulations to amend the list of functions.

Clause 7 – Arrangements on cancellation of registration

16. *Clause 7* enables the Department, where a body has ceased to be a registered adoption society (as defined in *clause 126 (general interpretation)*), to direct that body to make appropriate arrangements for the transfer of its functions relating to children.

Clause 8 – Inactive or defunct registered adoption societies etc.

17. *Clause 8* empowers the Department to take action, where a body registered under Part 3 (registration of independent care services) of the Regulation of Care Act 2013 has not made arrangements for the transfer of its functions relating to children as are required.

It also enables the Department to charge the agency for expenses necessarily incurred by it or on its behalf as a result of its failure to make appropriate arrangements. However, before taking action under this clause, the Department must, if practicable, consult the society concerned.

Clause 9 – Information concerning adoption

18. *Clause 9* requires adoption agencies to give to the Department any statistical or other general information it requires about its performance of all or any of its activities relating to adoption or the children and other persons in relation to whom it has performed those activities.

Clause 10 – General power to regulate adoption agencies

19. *Clause 10* enables regulations to be made relating to the exercise of adoption agencies functions in relation to adoption. *Clause 10(2)* provides that the power to make regulations under clause 10 is not limited by the specific powers listed, nor by any other powers exercisable in relation to approved adoption agencies.
20. *Clause 10(3)* enables regulations to be made to provide that a person who breaches the regulations commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale. *Clause 10(4)* provides a time limit for proceedings for an offence under this clause.

Clause 11 - Management etc. of approved adoption agencies

21. This clause adds further detail to the regulation making power in *clause 10* in relation to the management and general operation of adoption agencies.
22. *Clause 11(1)* provides for regulations to be made regarding adoption agencies to ensure that they are suitably managed and staffed, that their premises are fit for purpose and that adequate arrangements are made for the keeping of information. *Clause 11 (2)* prohibits persons from working in prescribed positions unless they are registered under the Regulation of Care Act 2013.

Clause 12 – Fees

23. This clause provides for regulations in relation to the charging and payment of fees. *Clause 12(1)* states that regulations under this clause may prescribe the fees which may be charged by adoption agencies for the provision of services to those providing facilities as part of the Adoption Service or the fees paid by an adoption agency to persons providing or assisting in providing such facilities.
24. *Clause 12(2)* provides for regulations to be made to prescribe the fees which may be charged by the Department where certain conditions are met. Those conditions are prescribed in *subsection (3)* and include those facilities provided in connection with the adoption of a child brought to the Island to be adopted, a Convention adoption, an overseas adoption or an adoption effected outside of the Island.
25. *Clause 12(4)* provides that regulations may prescribe the fees which may be charged by an agency in relation to counselling in the context of a disclosure of information.

Clause 13 – Assessments etc. for adoption support services

26. *Clause 13(1)* sets out what adoption support services means, being counselling, advice and information and any other services as prescribed by regulations, in relation to adoption. *Subsection (2)* provides that the power to make regulations under *subsection (1)* is to be exercised by the Department to provide financial support.
27. The Department must under *subsection (3)* carry out an assessment of the needs for adoption support services of any of the persons mentioned in *subsection (3) (a) to (d)*. The Department may at the request of any person carry out such an assessment (*subsection (4)*).
28. The assessment will provide the Department with a mechanism to see what adoption support is required. This will enable the Department to have an accurate picture of need and demand requirements. The provision of adoption support is to increase the likelihood of the adoption succeeding and to enable access to support and assistance.

29. The Department may request the help of approved adoption agencies or persons of a description prescribed in regulations to assist them in carrying out an assessment (*subsection (5)*).
30. Following assessment, where the Department decides that a person has the need for adoption support services, the Department must decide whether they should be provided. That decision cannot be made with reference to financial reasons alone (*subsection (6)*).
31. If the Department does provide the adoption support services and the circumstances fall within those in regulations, the Department must prepare a plan which must be provided to the person and kept under review (*subsection (7)*).
32. There are regulation making powers in *subsection (8)* with more detail as to what can be contained in those regulations specified in *subsection (9)*.
33. *Subsection (10)* provides for concurrent assessment of the needs of a person at the same time as any other assessment of the persons needs under any other Act, and where appropriate with the ability to request assistance from another Department or a Statutory Board where required (*subsections (11) and (12)*).

Clause 14 – Adoption support services: duty to provide information

34. *Clause 14(1)* states that the Department must provide the information in *subsection (2)* namely; information about adoption support services in the Island, information about the right to request an assessment and the agency's duties, as well as any other information prescribed by regulations.

Part 3 – The Considerations

Clause 15 - Introductory

35. Part 3 sets out the considerations that apply when making a decision in relation to adoption with *clause 15* introducing this Part.

Clause 16 – Considerations applying to the exercise of powers

36. *Clause 16* is an overarching provision that applies whenever a court or adoption agency (the Department or registered adoption society) is coming to any decision relating to the adoption of a child. This includes any decision by the court about whether or not to dispense with parental consent to adoption or to make a contact order in respect of a child under *clause 37*.
37. The paramount consideration of the court or adoption agency in any decision is the child's welfare throughout the whole of the child's life (*subsection (2)*). This recognises the life-long consequences of implications of adoption and also brings the welfare test in line with the 2001 Act. The court or adoption agency must also bear in mind that in general any delay is likely to prejudice the child's welfare (*subsection (3)*).
38. A welfare checklist is set out in *subsection (4)* and must be applied by the court or adoption agency when determining what is in the best interests of the child in any decision relating to adoption.
39. The checklist in *subsection (4)* includes having regard to the child's ascertainable wishes and feelings about the decision (having regard to their age and understanding) and to their particular needs. The likely effect on the child throughout the whole of their life having ceased being a member of the original family is considered, as well as their age, sex, background and any of the child's characteristics the court considers relevant, plus any harm the child is at risk of suffering. It also includes the child's relationship with relatives, any person who is a prospective adopter and any other person the court considers their relationship to be relevant. The child's religious persuasion, racial origin and cultural and linguistic background (their heritage) must also be considered.
40. *Subsection (5)* states what the court or adoption agency must have regard to when considering *subsection (4)(f)*, the likelihood and value of the relationship continuing, the ability of that person to provide a secure environment and the wishes and feelings of any person referred to in *subsection (4)(f)* regarding the child.
41. The child's heritage is also one of the considerations (*subsection (4) (g)*) with *subsection (6)* stating that this consideration shall not be an overriding consideration when deciding whether it is in a child's best interests to remain on Island. Whilst the child's heritage is

important, if the best match for that child can be made with adoptive parents not on the Island, then the child's heritage should not be taken as an overriding consideration and prevent that child from being adopted off Island.

42. In coming to a decision relating to the adoption of a child, the court or adoption agency will have to consider the whole range of powers available to it under the Bill as well as the powers in the 2001 Act. A court may only make an order where it considers that it would be better for the child than making no order (*subsection (7)*).
43. *Subsection (8)* sets out what is meant by 'coming to a decision relating to the adoption of a child' with *Subsection (9)* stating that references to relationships are not limited to legal relationships and references to a relative include the child's mother and father.

Part 4 – the Adoption Process

Clause 17 – Introductory

44. **Part 3** of the Bill sets out the adoption process, with *clause 17* introducing Part 3. This Part introduces new provisions for the placement of children for adoption with the intention to ensure key decisions are taken earlier in the adoption process than at present, with court involvement where necessary.
45. Dealing with the issue of consent at an earlier stage increases the likelihood of the child having greater stability and permanency. It also provides more certainty for prospective adopters who currently have to wait for the conclusion of care proceedings before the adoption proceedings can begin.

Clause 18 – Interpretation

46. *Clause 18* aids interpretation of this Part and states that parent means having parental responsibility within the meaning of the 2001 Act. It also clarifies that a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made. References to an adoption agency being authorised to place a child for adoption mean as under *clause 19*.

Clause 19 – Placement for adoption by agencies

47. *Clause 19(1)* states that an adoption agency may only place a child for adoption with prospective adopters where the birth parent has consented or where there is a placement under a placement order. The adoption agency must be satisfied that the child ought to be placed for adoption (*subsection (2)*). *Subsection (3)* provides that where a child is placed or is authorised to be placed, the child is a looked after child within the meaning of the 2001 Act.
48. If there is an application for an adoption order in progress and it has not been disposed of, an adoption agency may leave the child where they have been placed (e.g. with foster carers) but cannot place the child with any prospective adopters (*clause 19(4)*).

Clause 20 - Placing children with parental consent

49. *Clause 20* makes provision for placing children with parental consent. No child younger than 6 weeks old may be placed for adoption (*subsection (1)*). Any consent given before the child is 6 weeks old is ineffective and formal consent cannot be given until the child is 6 weeks old.
50. An adoption agency is able to place a child for adoption where it is satisfied that each parent or guardian has given consent to the placement and that consent has not been withdrawn (*subsection (2)*).
51. Where each parent or guardian of the child has consented to the child being placed with any prospective adopters being chosen by the agency and has not withdrawn that consent, the agency is authorised to place the child for adoption (*subsection 3*).
52. *Subsection (4)* provides that an agency may only place a child for adoption with prospective adopters if they are satisfied that the child ought to be placed for adoption.
53. *Subsection (5)* provides for the situation where the parents have consented to prospective adopters identified in the consent but the child is subsequently removed or returned. The agency is still treated as having the parents' consent.

54. *Subsection (6)* provides that where an application has been made a result of which is that a care order under the 2001 Act may be made and that the application is pending, the provisions relating to placement of children with parental consent do not apply.
55. References to being placed for adoption includes where a child has been placed with prospective adopters but consent has been withdrawn (*subsection (7)*).
56. Consent must be given in a form prescribed by rules (*subsection (8)*). Consent must be withdrawn in in the form prescribed by rules or by notice given to the agency (*subsection (9)*).
57. If consent is given by one parent and then at a later time, the other parent acquires parental responsibility, that parent is treated as having consented (*subsections (10) and (11)*). A child who is placed or authorised for placement for adoption is looked after by the Department (*subsection (12)*). However, if an application for an adoption order has been made but not disposed of, an adoption agency who placed a child with those persons may leave the child with them until the application is disposed of (*subsection (13)*).

Clause 21 – Advance consent to adoption

58. *Clause 21* enables a parent who consents to their child being placed for adoption by an adoption agency to give consent at the same time to the making of a future adoption order, known as 'advance consent' (*subsection (1)*). Consent may be where the parent has consented to prospective adopters identified in the consent or ones chosen by the adoption agency (*subsection (2)*). The placement of a child with prospective adopters can only be made if the adoption agency is satisfied that the child should be placed for adoption (*subsection (3)*).
59. Consent given in *clause 21* can be withdrawn before an adoption order is made (*subsection (4)*). A parent giving consent can by notice to the agency advise that they do not wish to be informed when the adoption order is made and there is also the ability to withdraw that notice (*subsection (5)*). Such a notice under *subsection (5)* has effect from the time it is received by the adoption agency but has no effect if the person concerned has withdrawn their consent (*subsection (6)*).

60. The form of the consent given under this clause must be prescribed by rules and must also be withdrawn in the form prescribed by rules or by notice given to the agency (*subsections (7) and (8)*).
61. *Subsection (9)* makes it clear that a child who is placed, or who is authorised to be placed, for adoption is looked after by the Department. If there is an adoption application that has not been disposed of, the agency may leave the child with the prospective adopters until the application is disposed of but apart from in that instance, the child may not be placed for adoption (*subsection (10)*).

Clause 22 – Placement Orders

62. *Clause 22 (1)* defines a placement order and states that a placement order cannot be made for a child who is less than 6 weeks old, with any consent being ineffective.
63. *Subsection (2)* defines a placement order as an order made by the court authorising the Department to place a child for adoption with any prospective adopters who may be chosen by the Department.
64. *Subsection (3)* provides that the court may not make a placement order unless the child is already subject to a care order or it has the power to make a care order under section 31(2) of the 2001 Act. In order to be able to make a care order (and therefore a placement order) the court must first be satisfied that the child concerned is suffering, or likely to suffer, significant harm, and that this is attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him, or the child is beyond parental control. The only exception to this is where the child has no parent or guardian. In these cases the 'significant harm' threshold in section 31(2) does not apply. This is to allow the Department to place orphaned children for adoption.
65. *Subsection (4)* provides that the court may only make a placement order if it is satisfied that the parent has consented to the child being placed for adoption with any prospective adopters who may be chosen by the agency and has not withdrawn that consent or that the parent's consent should be dispensed with. This subsection is subject to *subsection (5)*.

66. *Subsection (5)* deals with the circumstances where it is possible to dispense with the requirement to have parent or guardian consent. This can only occur if the court is satisfied that the parent or guardian cannot be found, the parent or guardian lacks capacity or the welfare of the child requires the consent to be dispensed with. The child's interests are the paramount consideration and the welfare checklist will be considered when dispensing with consent.
67. A placement order may be made subject to any conditions the court thinks appropriate (*subsection (6)*), those conditions may make provision for the placement of a child for adoption with any prospective adopters outside the Island (*subsection (7)*).
68. A placement order will continue in force until it is revoked, an adoption order is made in respect of the child or the child marries or reaches the age of 18 (*subsection (8)*).

Clause 23 – Applications for placement orders

69. *Clause 23* sets out when the Department must apply for a placement order. The Department must apply for a placement order when the child is placed for adoption or is accommodated by the Department, they are satisfied that the child ought to be placed for adoption, the parent does not consent to placement for adoption and either the child has no parent or guardian or the Department consider the threshold criteria in section 31(2) of the 2001 Act are met (*subsection (1)*). This might occur for example where the parent has withdrawn consent to placement for adoption but the Department remains of the view the child should be adopted.
70. Where an application is pending on which a care order under the 2001 Act might be made, or the child is subject to a care order but the parent does not consent to the placement of a child for adoption, and the Department are satisfied that the child should be placed for adoption, they must apply to the court for a placement order (*subsection (2)*). If the child is subject to a care order and the parent or guardian is prepared to consent to the placement of the child for adoption, the Department have a discretion as to whether to apply for a placement order (*subsection (3)*). Alternatively, they could decide to place the child with parental consent under *clause 20*.

71. *Subsection (4)* provides that where an application for a placement order is pending, the child is a looked after child for the purposes of the 2001 Act until the application is determined.
72. *Subsection (5)* states that *subsections (1) to (3)* do not apply where a person has given notice of their intention to adopt, unless that notice has expired or their application has been withdrawn or refused, or where an application for an adoption order has been made but hasn't been disposed of.
73. Under *subsection (6)* the court can give directions in relation to the undertaking of appropriate assessments, including medical or psychiatric, when a placement order has been made and not disposed of and no interim care order is in force under section 35 of the 2001 Act. If however the child is of sufficient understanding to make an informed decision they may refuse to have an examination or assessment (*subsection (7)*).

Clause 24 – Revoking placement orders

74. *Clause 24* deals with the revocation of placement orders. The Department or the child (a person acting on behalf of the child) may apply to revoke a placement order at any time. Any other person, for example, the parent, may apply with the leave of the court if the child is not yet placed for adoption by the Department. Leave of the court cannot be given unless there has been a change in circumstance since the order was made (*subsections (1), (2) and (3)*).
75. If the court considers an application for an adoption order, and determines not to make the order, it may revoke the placement order (*subsection (4)*). Where an application for the revocation of a placement order has been made and not disposed of and the child is not placed for adoption by the Department, the child may not without the court's leave be placed for adoption under the order (*subsection (5)*).

Clause 25 – Child to live with adopters before application

76. *Clause 25* sets out the period a child must live with the applicants before they can apply for an adoption order. It also states that the court may not make an order unless it is satisfied that the adoption agency has had sufficient opportunity to see the child with the applicant(s) in the home environment.

Clause 26 – Reports where child placed by agency

77. The adoption agency which places the child for adoption is responsible for submitting to the court a report on the suitability of the applicants and any other matters relevant to the operation of *clause 16* and for assisting the court in any manner as it may direct. The report should in particular address the matters in the welfare checklist.

Clause 27 – Notice of intention to adopt

78. *Clause 27* provides that an adoption order may not be made in respect of a child in a non-agency case unless the proposed adopters have given notice of intention to adopt to the Department (*subsection (2)*). The notice must be given not more than two years or less than three months before the application is made for the adoption order (*subsection (3)*).
79. Where a person applies for an adoption order under *clause 25 (7)* or *(8)* but the conditions are not met, the courts leave is required (*subsection (4)*).
80. Where the Department receives a notice of intention to adopt they must investigate and are responsible for preparing a report for the court which includes the suitability of the proposed adopters and any other matters relevant to the operation of *clause 16 (subsections (5) and (6))*.
81. Where the adoption agency has placed the child but the placement is not with prospective adopters and those persons give notice of intention to adopt, the persons are still not treated as prospective adopters at the time the notice was given (*subsection (7)*).

Clause 28 – Suitability of adopters

82. *Clause 28 (1)* sets out that *subsections (2) to (5)* apply when determining a person's suitability to adopt. *Subsection (2)* provides that a prospective adopter and any member of their household aged over 18 years or over must obtain an enhanced criminal records certificate.
83. An adoption agency may not consider a person suitable to adopt if that person or any member of their household aged over 18 has been convicted of a specified offence committed aged 18 or over or has been cautioned and that offence admitted (*subsection*

(3)). A specified offence is defined in *subsection (4)* as being an offence against a child, an offence against an adult under the Sexual Offences Act or any other offence involving bodily injury to a child.

84. *Subsection (5)* states what an adoption agency must consider when determining suitability, this includes, involvement in any previous family court proceedings, a chronology of the prospective adopter from birth, including their views on adoption, raising children and their reasons for adopting, amongst others. Much of the detail regarding suitability to adopt has been placed in this subsection of the Bill however *subsection (6)* allows regulations to be made in order to make further provision should this be necessary.
85. In determining the suitability of a couple to adopt the agency must have proper regard to the need for stability and permanence in the couple's relationship (*subsection (7)*).
86. *Subsection (8)* provides for the situation where a person's suitability to adopt has been assessed by a British Islands adoption panel and a child is to be adopted in the British Islands and brought to the Island. A further panel constituted in the Island must have regard to the British Island's adoption panel decision and reasoning, the current and future needs of the child, whether the needs can be met after the person or authority ceases to have responsibility for the child.

Clause 29 – Adoption orders

87. *Clause 29 (1)* states that an adoption order is an order by the court on an application by a couple or one person giving parental responsibility for a child to the adopter or adopters. The birth parent's parental responsibility is extinguished when an adoption order is made. Any order under the 2001 Act is also extinguished as is any agreement or order for child maintenance payments post-adoption (*subsection (2)*).
88. *Subsection (3)* states that parental responsibility before the adoption order is made remains the same and if an adoption order is made for a partner of the parent of the person to be adopted, the adoption order does not affect the parental responsibility of that parent or any duties of that parent within *subsection 2(c)*. *Subsection 2(c)* also does not apply to a duty arising by an agreement which constitutes a trust or which expressly

states that the duty is not to be extinguished by virtue of the making of the order (*subsection (4)*).

89. *Subsection (5)* provides that an adoption order can be made even if the child to be adopted is already an adopted child.
90. *Subsection (6)* provides that before making an adoption order the court must consider whether there should be arrangements for allowing contact, including indirect contact with the child. In this respect it must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.

Clause 30 – Conditions for making adoption orders

91. *Clause 30* sets out the three conditions, one of which must be satisfied before an adoption order can be made where a child has a parent or guardian.
92. *Subsection (2)* provides the first condition that the court needs to be satisfied that each parent or guardian consents to the making of the adoption order or has given advance consent to the making of the adoption order under *clause 20* (and has not withdrawn that consent) and does not oppose the making of an adoption order or that the parent's consent should be dispensed with.
93. The court cannot dispense with consent of the parent unless it is satisfied that the parent or guardian cannot be found or lacks capacity to give consent or the welfare of the child required the consent to be dispensed with (*subsection (3)*). A parent or guardian may not oppose the making of an adoption order if they have consented under *clause 20* without the court's leave.
94. If a birth mother gives consent within 6 weeks of giving birth it is ineffective (*subsection (4)*).
95. If a parent or guardian wants to oppose the making of an adoption order, they will need to obtain the court's leave (*subsection (5)*).

96. Subsection (6) provides the second condition that the child has been placed for adoption by an adoption agency with the prospective adopters who are applying for the order and either the child was placed by consent under *clause 20* and the consent of the mother was given when the child was at least 6 weeks old or under a placement order and no parent opposes the making of the adoption order. A parent may only oppose the making of the order under this second condition with the leave of the court (*subsection (7)*).
97. The third condition is provided in *subsection (8)*, that the child is the subject of a section 21 placement order under the Adoption and Children Act 2002 (of Parliament), or is free for adoption via a Scottish permanence order or freeing order made in Northern Ireland. The court cannot give leave under this clause unless there has been a change of circumstances since the consent was given or the placement order was made (*subsection (9)*).
98. An adoption order may not be made in relation to a person who is, or has been, married, or in a civil partnership or who has attained the age of 19 (*subsections (10), (11), (12)*).

Clause 31 – Restrictions on making adoption orders

99. *Clause 31* provides that a court may not hear an application for an adoption order where a previous application by the same adopters in respect of the same child was refused, unless it appears to the court that there is a change of circumstances or other reason which justifies the second application.

Clause 32– Applications for adoption

100. *Clause 32* provides that an application for an adoption order may be made by a couple or one person but only if it is made under *clause 33* or *34* and the condition as to domicile or habitual residence is satisfied. "Couple" is defined in *clause 126 (6)* (general interpretation). An application for an adoption order may only be made if the person to be adopted has not reached 18 by the date of the application.

Clause 33 – Adoption by couple

101. Under *clause 33* an application for an adoption order by a couple may only be made where both of the couple have reached the age of 21. However, where one of the couple is the

mother or father of a child to be adopted, an application may be made if that person is 18 or over and the other person is 21 or over.

Clause 34 – Adoption by one person

102. *Clause 34 (1)* provides that an application may be made by one person who is 21 and is not married or a civil partner. *Subsection (2)* provides that an adoption order may be made on the application of one person who is over 21 if the court is satisfied that the person is the partner of a parent of the person to be adopted i.e. step-parent adoption (although they need not be married). "Partner" is defined in *clause 126 (9)*.
103. An adoption order may be made on the application of one person who is over 21 and is married if the court is satisfied that the person's spouse can't be found, they have separated and are living apart permanently, the spouse is, as a result of ill-health, incapable of applying for an adoption order (*subsection (3)*). The same applies for civil partners (*subsection (4)*).

Part 5 – Consequences of placements

Clause 35 - Introductory

104. Part 5 Consequences of placements sets out *clause 35* which sets out the various consequences of a child being placed for adoption.

Clause 36 – Parental responsibility

105. *Clause 36* makes provision for who is to have parental responsibility where an adoption agency is authorised to place a child for adoption under *clause 22* or where a placement order is in force. Parental responsibility is given to the adoption agency (*subsection (2)*) and while the child is placed with prospective adopters, parental responsibility is given to them (*subsection (3)*). The child's parents retain parental responsibility throughout the process, up to the point at which any adoption order is made.
106. *Subsection (4)* allows the adoption agency to determine the extent to which the parental responsibility of any parent, guardian or prospective adopters is to be restricted.

Clause 37 – Contact

107. *Clauses 37 and 38* make provision for applications for contact in regarding children placed for adoption and where an adoption agency is authorised to place a child for adoption under *clause 20* or under a placement order. *Subsection (1)* provides that where an adoption agency is authorised to place a child for adoption, or a child is placed for adoption who is less than 6 weeks old, any contact order under section 11 (orders with respect to children) of the 2001 Act or an order under section 33 (parental contact with children in care) of that Act ceases to have effect.
108. The arrangements set out in previous contact orders may no longer be appropriate. The objective should be to agree whatever new arrangements for contact are appropriate given the adoptive placement. However, should agreement not be possible, an application may be made to the court for an order for contact (*subsection (2)*). The application may be made by the child or the agency or the parent or other persons who are identified in *subsection (3)*. On an application the court may make an order 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 that person and the child otherwise to have contact with each other.
109. The court can also make an order under its own initiative in relation to contact when making a placement order (*subsection (4)*).

Clause 38 – Contact: supplementary

110. *Clause 38* makes supplemental provision in relation to contact. There may be cases where it is inappropriate for contact to take place even though provided for under an order. *Subsection (2)* enables the adoption agency to refuse contact for a period of not more than 7 days if it is satisfied that it is appropriate to do so in order to safeguard the child's welfare. Regulations may be made under *subsection (3)* which set out the circumstances in which the terms of any order made under *clause 37* may be departed from.
111. *Subsection (4)* imposes a duty on the court when making a placement order to consider the arrangements the agency has made or proposes to make in relation to contact and

under *subsection (5)* the court may impose any conditions on a contact order made under *clause 37* as it thinks fit.

Clause 39 - Further consequences of placement

112. *Clauses 39 and 40* make further provision as to the consequences of placement. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under *clause 20*, a parent cannot apply for a residence order (*clause 39 (1)(a)*), unless an application for a final adoption order has been made and the parents have obtained the leave of the court to oppose the making of the adoption order under *clause 30 (5) or (7)*. *Subsection (5)* explains what a residence order is for the purposes of *subsection (1) (a)*.
113. Where a child is placed for adoption, or an adoption agency is authorised to place a child for adoption under *clause 20*, and an application has been made for an adoption order, a guardian of the child may not apply for a special guardianship order unless they have obtained the leave of the court (*subsection (1) (b)*).
114. *Subsection (2)* provides that where a child is placed with consent or an adoption agency is authorised to place under *clause 20*, or a placement order is in force a person is prohibited from doing the things defined in *subsection (3)* unless they obtain the court's leave or have written consent from the parent. The things defined in *subsection (3)* for the purposes of *subsection (2)* are causing the child to be known by a new surname or removing the child from the Island.
115. *Subsection (4)* provides that *subsection (3)* doesn't prevent the removal of a child from the Island for up to one month by the person who the child lives with and who has parental responsibility.

Clause 40– Further consequences of placement orders

116. *Clause 40* makes further provision in relation to placement orders. Where a placement order is made in respect of a child and either the child is subject to a care order or the court makes a care order in the same proceedings, the care order is suspended during the period when the placement order is in force (*subsection (1)*). On the making of a placement order, any order mentioned in section 11(1) (orders with respect to children)

of the 2001 Act (for example, residence orders) and any supervision order cease to have effect (*subsection (2)*).

117. *Subsection (4)* states that when a placement order is in force a residence order can only be made if an application for an adoption order has been made and the parent or guardian or any other person applying for the residence order has obtained the court's leave to do so. *Subsection (5)* sets out what a residence order is for the purposes of this clause.
118. No special guardianship order can be made when a placement order is in force unless an application has been made for an adoption order and the person has the court's leave (*subsection (6)*).
119. In relation to special guardianship orders section 17A (special guardianship orders) of the 2001 Act applies, save for the wording specified in *subsection (7)* which removes the 3 month period preceding an application the person has to give written notice to the Department. *Subsection (8)* makes further provision in relation to special guardianship orders.

Clause 41 – General prohibitions on removal

120. *Clause 41* provides restrictions on removal of the child. *Subsection (1)* states that where a child is placed with prospective adopters under *clause 20* it is an offence for a person other than the adoption agency to remove the child from that placement. Where a child is in the care of the Department and the Department has applied for a placement order and it has not been disposed of, a person must have the court's leave to remove the child.
121. *Subsection (2)* states that only a person who has the court's leave, or the Department, may remove the child when they are in the care of the Department and the Department have applied for placement order and it has not been disposed of.
122. Where *subsection (2)* does not apply but the child is being provided with accommodation by the adoption agency and the agency can place the child under *clause 20* or would be authorised if the consent had not been withdrawn, only the agency may remove the child (*subsection (3)*).

123. *Clause 41* is subject to *clauses 47 to 49* but not if the child is subject to a care order. *Clause 41* applies whether or not the child is in the Island, does not affect the Department's or other person's powers in any other enactment other than section 25 (3) or (4) (provision of accommodation) of the 2001 Act and does not prevent the removal of a child who is arrested. It is an offence to remove the child in contravention of this clause (*subsection (6)*).

Clauses 42 to 46

124. These clauses cover restrictions on the removal of the child in non-agency cases, i.e. where the child has not been placed for adoption by an adoption agency. These include adoptions by the partner of a parent, cases where fostering service foster parents wish to adopt a child placed with them, and adoptions by relatives and private foster parents.

Clause 47 – Recovery by parent etc. where child not placed or is a baby

125. *Clause 47* applies where a child is not yet placed for adoption but is being provided with accommodation by the Department and consent to placement has been withdrawn, or where a child is placed for adoption and either the child is less than 6 weeks old or the agency has at no time been authorised to place the child (*subsections (1) and (3)*).

126. Consent to placement must be withdrawn by notice in writing to the agency or in the form prescribed. If the parent informs the agency that they wish the child to be returned to them, the agency must return the child within seven days unless the agency is the Department and they have applied for a placement order (*subsection (2)*).

127. *Subsections (4) and (5)* provide that the agency must give notice to the foster carers or prospective adopters, who must return the child within 7 days and if they do not do so, they commit an offence.

Clause 48 – recovery by a parent etc. where a child placed and consent withdrawn

128. *Clause 48* applies where a child is placed for adoption with prospective adopters under *clause 20*, the parent has withdrawn consent and the agency agrees the child should be returned to his parent (*subsection (1)*). However, this clause does not apply where an

application is, or has been made for a placement order and that application has not been disposed of (*subsection (2)*).

129. If the parent informs the agency that they wish the child to be returned to them, the agency must give notice to the prospective adopters that the parent wishes the child to be returned to them and the prospective adopters have to return the child to the agency within 14 days (*subsection (3)*). It is an offence not to return the *child (subsection (4))*.
130. If before notice of removal is given, an application for an adoption order in England and Wales (or Scotland or Northern Ireland) or for a residence order or special guardianship order, or for leave to apply for these orders in respect of the child, and that application has not been disposed of, the prospective adopters do not have to return the child unless the court makes an order to that effect (*subsection (6)*).

Clause 49 – Recovery by parent etc. where child placed and placement order refused

131. *Clause 49* applies where a child is placed for adoption under *clause 20*, the Department's application for a placement order has been refused, and the parent wishes the child to be returned to him (*subsection (1)*). The prospective adopters must return the child to the Department on the date set by the court and as soon as they do, the child must be returned to his parent (*subsections (2) and (4)*). If the prospective adopters do not do so, they commit an offence *subsection (3)*.

Clause 50 – Placement orders: prohibition on removal

132. *Clause 50* applies where a placement order is in force or has been revoked, but the child has not been returned by the prospective adopters or remains in any accommodation provided by the Department (*subsection (1)*). It is an offence, to remove the child from the prospective adopters or accommodation provided by the Department (*subsection (2)*).
133. Where a placement order has been revoked by a court and the court determines that the child is not to remain with the prospective adopters, the adopters must return the child to the Department. It is offence not to do so (*subsections (3) and (4)*).

134. If the child is in accommodation provided by the Department and the child is returned to the Department, the Department must return the child to the parent at once (*subsection (6)*).

Clause 51 – Return of child in other cases

135. *Clause 51* applies where a child has been placed by an agency and the prospective adopters wish to return the child. The agency must receive the child within 7 days of receiving the notice, advise the birth parents if they have chosen to be notified. (*Subsection (1)*).

136. Where the adoption agency believes the child should not remain with the prospective adopters and gives the prospective adopters notice of this, the child must be returned within 7 days of that notice (*subsection (2)*). Again the birth parent must be informed unless they have chosen not to be (*subsection (3)*). Non-compliance with this is an offence (*subsection (4)*).

137. If before notice of removal is given, an application was made for an adoption order in England and Wales (or Scotland or Northern Ireland) or for a residence order or special guardianship order, or for leave to apply for these orders in respect of the child, and that application has not been disposed of, the prospective adopters do not have to return the child unless the court makes an order to that effect (*subsection (5)*).

Clause 52 – Recovery orders

138. *Clause 52(1)(a)* makes provision for what is to happen where a child is removed, or there are reasonable grounds for believing that a person intends to remove a child, or a child is withheld and not returned, in breach of the previous provisions. It also applies where a person has failed to comply with the clauses mentioned in *subsection (1) (b)*.

139. An application may be made to the court and the court may by order direct any person who is in a position to do so to produce the child, authorise the removal of the child by an authorised person, require anyone who has information as to the child's whereabouts to disclose that information to a constable or officer of the court, or authorise a constable to enter any premises specified in the order (if there are reasonable grounds for believing

the child is there) and search for the child, using reasonable force if necessary (*subsection (2)*).

140. Premises specified in subsection (2) (d) may only be specified if the court has reasonable grounds to believe the child is there (*subsection (3)*). Persons referenced in subsection (2) are any person named by the court, any constable, or any person who is authorised to exercise any power under the order by the adoption agency (*subsection (4)*).
141. If a person intentionally obstructs a person exercising the power of removal he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (*subsection (5)*).
142. A person who is required to disclose information must disclose that information even though it might amount to evidence that he had committed an offence (*subsection (6)*). However, in any criminal proceedings in which the person is charged with an offence (except one which is excluded in *subsection (8)* e.g. offences under section 2 or 5 of the Perjury Act 1952) the prosecution cannot adduce evidence relating to the information provided or ask questions about it, unless it is raised by or on behalf of that person (*subsection (7)*).

Part 6 – Post-adoption contact

Clause 53 – Introductory

143. *Clause 53* sets out this part.

Clause 54 – Post-adoption contact

144. *Clause 54* provides for post-adoption contact. It applies where the agency has placed or was authorised to place a child for adoption and the court is making or has made an adoption order (*subsection (1)*). Indirect contact only can be awarded by the court (*subsection (2)*).
145. The people able to make an application are listed in *subsection (3)*. An application for an order may be made by a person who has applied for an adoption order or in whose favour

the adoption order has been made, the child can also apply or any person who has obtained the court's leave (*subsection (4)*).

146. The court will consider the child's welfare and any other appropriate factors when deciding whether to grant leave (*subsection (5)*).

147. Indirect contact is defined in *subsection (8)* as being on going exchange of correspondence (letters, cards and photographs) but does not include face to face, video link or telephone contact.

Part 7 - Disclosure of Information

Clauses 55 and 56

148. *Clause 55* introduces Part 7. *Clause 56* provides for regulations to be made regarding the disclosure of information to prospective adopters by adoption agencies.

Clause 57 – Information to be kept about a person's adoption

149. *Clause 57* enables regulations to be made to state what information an adoption agency must keep in relation to that person's adoption and the form and manner in which it must be kept. Regulations made under this clause may specify the circumstances where information held, or previously held, by an adoption agency may be transferred to another adoption agency (*subsection (3)*).

Clause 58 – Restrictions on disclosure of protected etc. information

150. Under *subsection (1)*, any section 57 information (disclosure of information which is restricted by virtue of *subsection (1)* and *(2)*) about an adopted person or any other person which includes identifying information about the adopted person may only be disclosed by the agency to a person in pursuance of this Part. *Subsection (2)* makes provision regarding information held by an adoption agency obtained from the Registrar General which would enable the adopted person to obtain a certified copy of that person's birth certificate or information relating to an entry in the Adoption Contact register may only be disclosed to a person by the agency in pursuance of this Part. The disclosure of

protected information under this clause can also be by agreement (*subsection (5)*). This clause contains regulation making powers to enable the necessary detail to be set out in secondary legislation (*subsections (6) and (7)*). *Subsection (8)* provide for time limits for proceedings for an offence under this clause.

Clause 59 – Disclosing protected information about adults

151. *Clause 59* deals with protected information and none of the information is about a person who is a child at the time of the application. It provides for what the agency needs to take into account in deciding whether to disclose the information and allows the agency not to process if it considers it inappropriate to do so.

Clause 60 – Disclosing protected information about children

152. *Clause 60* provides for the disclosure of information relating to a person who is a child at the time of the application (*subsection (1)*). The agency does not have to proceed if it is not appropriate to do so (*subsection (2)*). If proceeding, the agency must also take reasonable steps to obtain the views of any parent or guardian and the views of the child if appropriate having regard to their age and understanding (*subsection (3)*).

153. If the information is about a person who is aged 18, the agency must take reasonable steps to obtain their views (*subsection (4)*). The child's welfare must be the paramount consideration and if there is any other child, the agency must have regard to that child's welfare (*subsection (6)*).

Clause 61 – Disclosing information to adopted adult

154. Once a person has reached the age of 18, that person has a right to receive any information from the agency to obtain a certified copy of their birth and any protected information disclosed to the adopters. The court can order for the information not to be released if the circumstances are exceptional.

Clause 62 – Disclosure of other information

155. *Clause 61* deals with information which is not considered to be protected information.

Clause 63 – Counselling

156. *Clause 63* makes provision in respect of counselling for those seeking information under these sections, those considering consenting to or objecting to the disclosure of information, and those considering an agreement for the sharing of protected information.
157. *Subsections (1) and (2)* provide the power to make regulations to require adoption agencies to provide information about access to counselling services and to make arrangements to secure the provision of counselling to those seeking information in prescribed circumstances. The intention is to make counselling available to an adopted person, if they wish to access it, where they apply to the agency for the disclosure of protected information about another person.
158. *Subsection (3)* provides a power to make regulations to enable adoption agencies to disclose the information that is needed by the counselling agency for the purposes of providing the counselling. Where the counselling is to be provided outside the Island, the adoption agency may require the person who is to receive the counselling to pay a prescribed fee.

Clause 64– Other provision to be made by regulations

159. *Clause 64* provides for regulation making powers regarding the performance by adoption agencies of their functions, the manner in which information may be received and the matters in this clause.
160. Regulation making powers in this clause include the recording of agreements (*subsection (2)*) and the requirement for agencies to inform prescribed persons of their rights and opportunities or give their views regarding disclosure (*subsection (3)*). Regulations can also provide the Registrar General with a power to disclose to any person information to allow them to contact the adoption agency and to disclose to the agency the information required about an entry on the Adoption Contact Register (*subsection (4)*). Fees may be payable as prescribed by regulations (*subsections (5), (6) and (7)*).

Clause 65 – Regulations: Registrar General approval

161. *Clause 65* states that regulations in relation to the application for the disclosure of information by the Registrar General need the Registrar General's approval.

Part 8 – Supplemental and Miscellaneous

Clauses 66 and 67 – Introductory and Inspection of premises

162. *Clause 66* introduces this Part, with *clause 67* providing for the inspection of premises. This clause provides for the inspection of premises in which a child is living after having been placed by the Department or an approved adoption society or where a child placed under *clause 27* is living. *Subsection (2)* of *clause 67* provides for the inspection of records or provision of information to the Department.

163. An officer authorised by the Department must conduct the inspection and if the inspection relates to the Department, the inspector is authorised by the Council of Ministers (*subsections (3)* and *(4)*). A computer being used in connection with any records can also be inspected (*subsection (6)*).

164. *Subsection (7)* gives any person authorised to carry out an inspection the right of entry to premises at a reasonable time and a right to request reasonable assistance. If required to do so the person must provide a document proving the authority to inspect (*subsection (8)*). The obstruction of a person exercising the powers in this clause commits an offence (*subsection (9)*).

Clause 68 – Independent review of determinations

165. *Clause 68* provides for the establishment of an independent review procedure regarding qualifying determinations made by adoption agencies. A person in respect of whom a determination specified in regulations has been made may apply to a panel a review of the relevant determination. This provides prospective adopters with a right to request a referral to an independent panel, where an adoption agency indicates that it is minded to turn down their application to adopt.

166. It is also intended that the independent review mechanism will review qualifying determinations made by adoption agencies concerning the disclosure of protected information held by the agency where the agency have discretion as to whether to disclose such information.
167. Regulations may be made under *subsection (3)* dealing with the duties and powers of a panel (including the power to request a contribution towards the cost of a review from the adoption agency which made the original determination), administration and procedures, appointment of panel members, payment of expenses, the duties of adoption agencies in connection with reviews and the monitoring of reviews.

Clause 69 – Restriction on arranging adoptions etc.

168. *Clause 69* sets out the steps in relation to arranging an adoption that may only be taken by an adoption agency or a person acting in pursuance of an order of the Court.
169. *Subsection (2)* lists the steps that should not be taken, for example seeking, offering or placing a child for adoption. *Subsections (3) and (4)* provide that certain steps do not apply where one or both of the prospective adopters are parents, relatives or guardians of the child, or where a prospective adopter is a partner of a parent.
170. *Subsection (6)* enables the Department to make an order amending *subsections (1) to (4)* where it considers an amendment necessary or expedient. This power could be used, for example, to specify additional steps for inclusion in the list in *subsection (2)* to further protect the interests and welfare of children or other parties affected by adoption.

Clause 70 – Offence of breaching restrictions under clause 69

171. *Clause 70* provides that where a person contravenes *clause 69* they are guilty of an offence. It also provides that if the offender is an adoption society, the person who manages the society is also guilty of the offence. Defences are provided in *subsections (2) to (4)*.

Clause 71 –Restriction in reports

172. *Clause 71* provides restrictions on the preparation of certain reports in connection with adoption. *Subsection (1)* provides a regulation making power so that a person who is not within a prescribed description may not, in any prescribed circumstances, 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. This is to ensure that only suitably skilled or professionally qualified staff carry out the necessary evaluations and reports.
173. It is an offence to prepare a report in contravention of this clause. Where an offence is committed by a person who works for an adoption society the manager of that society is also guilty of the offence. However that person can rely on the defence that they did not realise it was being prepared in accordance with the restriction on who can prepare the report (*subsections (3) (4) and (5)*). There is a limitation period upon which proceedings can be brought under this clause *in subsection (7)*. *Subsection (8)* provides for the penalties for an offence under this clause.

Clause 72 – Prohibition of certain payments

174. *Clause 72* prohibits certain payments or rewards in connection with the adoption of a child. *Subsection (1)* provides that this section applies to any payment, other than an excepted payment, which is made for the adoption of a child, giving any consent for the child's adoption, or the removal from the Island of a child who is a Commonwealth citizen, or is habitually resident in the Island, to a place outside the British Islands for the purpose of adoption.
175. *Subsection (1)* also applies to any payment in connection with certain steps taken to arrange an adoption under *clause 69* and the commissioning or preparation of reports where it would contravene *clause 71*.
176. *Subsection (3)* provides that an offence is committed where a person makes any payment to which this section applies, agrees or offers to make any such payment, or receives or agrees to receive or attempts to obtain any such payment and provides the penalty on summary conviction where an offence is committed. *Subsection (4)* provides for the time limits for proceedings to be brought under this clause.

Clause 73 – Excepted payments

177. A payment is an excepted payment if it is made to an agency by a parent or guardian of a child, the prospective adopters or adopters regarding expenses reasonably incurred in connection with the proposed adoption. Payments can be excepted in certain circumstances to allow reasonable expenses such as any legal or medical expenses or expenses incurred in arranging for the adoption of a child outside the Island.

Clause 74

178. This clause aids the interpretation of clauses 69 to 73.

Clause 75, 76 and 77 – Privacy and Evidence of consent and Use of adoption records from other parts of the British Islands

179. *Clause 75* provides that proceedings under the Bill may be heard and determined in private. This means that only those directly involved in the case will be present during the proceedings.

180. *Clause 76* provides for a document signifying consent to be admissible in evidence without any further proof of the signature of the person who executed it when the document has been witnessed in accordance with rules.

181. *Clause 77* allows documents to be used as evidence from other parts of the British Islands.

Clause 78 – United Kingdom

182. *Clause 78* enables regulations to be made providing for corresponding references in the UK (such as to orders or a person exercising functions) and when the Island is mentioned to include the UK, amongst others.

Clause 79 -Avoiding delay

183. *Clause 79* aims to avoid delay in the court process. It imposes an obligation on the court to draw up a timetable or give directions to ensure the timetable is adhered to.

Clause 80 – Service of notices etc.

184. *Clause 80* provides that any notice or information given as a result of the Bill may be given by post.

Clause 81 – Pre-commencement adoptions: information

185. Regulations may be made under this clause to assist persons adopted before the sections relating to the disclosure of information are in force and to facilitate contact between those persons and their relatives. Those regulations may confer functions on the Department, Registrar General and adoption agencies.

Part 9 – Status of Adopted Children

Clauses 82 and 83

186. *Clause 82* introduces Part 9 with *clause 83* giving further information in relation to the meaning of terms used in the Part.

Clause 84 – Status conferred by adoption

187. *Clause 84* provides for the determination of the legal status of an adopted child. *Subsection (1)* provides that the child is to be treated as if born as the child of the adopter or adopters. *Subsection (2)* provides that an adopted child is the legitimate child of the adopters or adopter and where a person is adopted by a couple or a partner of their parent, they are to be treated as if they had been born as the child of the relationship of that couple.

188. *Subsection (3)(a)* provides that in an adoption by the partner of a parent, the adopted person is *only* to be treated in law as the child of the adopter and the partner of the adopter. In any other circumstances *subsection (3)(b)* provides that an adopted person is to be treated *only* in law as the child of the adopter or adopters.

Clause 85 – Adoptive relatives

189. *Subsections (1)* and *(2)* enable a relationship that exists as a consequence of *clause 84* to be referred to as an adoptive relationship. An adopter may be referred to as an adoptive

parent or as an adoptive father/mother depending on the circumstances of the case. However, it does not prevent any term not qualified by the word "adoptive" from being treated as including an adoptive relative.

190. *Subsection (3)* provides that where there is a reference to the adoptive mother and father of a child, if the child has been adopted within a same sex relationship, whether by a couple or by the partner of a parent, the reference should be read as a reference to the child's adoptive parents.

Clause 86 – Rules of interpretation for instruments concerning property

191. *Clause 86* sets out the rules of interpretation for any instrument concerning the disposition of property. *Subsection (2)* applies where a disposition depends on the date of birth of a child or children of an adoptive parent(s). For the purposes of the disposition the adopted person is to be treated as having been born on the date of the adoption order. Where two or more people have been adopted on the same date they are to be treated as if they had both been born on that date but in the order of their actual births. *Subsection (3)* gives examples of phrases in wills on which *subsection (2)* can operate.
192. *Subsection (4)* allows an adopted person to retain certain interests vested in him before his adoption. *Subsection (5)* provides for the meaning of "qualifying interest" for the purposes of this clause. *Subsection (6)* provides that, where it is necessary to determine for the purposes of a disposition of property whether a woman can have a child, it is to be presumed that when she has attained 55 years of age she will not adopt a child after the execution of the instrument, and if she does that child will not be treated either as her child or, if she is adopting as part of a couple, the child of the other one of the couple for the purposes of that instrument. *Subsection (7)* provides a definition of "instrument" for the purposes of this clause.

Clause 87 – Property devolving with peerages etc.

193. *Clause 87* provides that adoption does not affect the descent of any peerage or dignity or title of honour or the devolution of any property devolving with such titles. Unless there is a contrary intention expressed in the instrument, an adopted person cannot inherit such a title or any associated property from their adoptive parents. Likewise, the natural child

of a Peer who is adopted will inherit a peerage, dignity or title of honour and any property devolving with such titles from his birth parents.

Clause 88 – Protection of trustee and personal representatives

194. *Clause 88* provides for the protection of trustees or personal representatives who convey or distribute property in ignorance of the making or revocation of an adoption order.

Clause 89 – Meaning of disposition

195. *Clause 89* defines the terms “disposition” and “power of appointment” for the purposes of this Part. *Subsection (4)* confirms that the provisions of this Part apply equally to an oral disposition as to a written one. Also for the purposes of this Part, *subsection (5)* provides that the date of death of the testator is the date a will or codicil is treated as being made. *Subsection (6)* provides that the provisions of the law of intestate succession are to be treated as if they are contained in an instrument that the deceased executed while of full capacity immediately before his/her death.

Clause 90 – Miscellaneous enactments

196. *Clause 90* provides that the general principle within *clause 84* (that an adopted person is to be treated as if he had been born as the child of the adopter or adopters) is not to apply for the purposes of marriages within prohibited degrees of relationship or to incest, and for these purposes an adopted person remains part of his natural family. The only exception is that an adopted person cannot marry his adoptive parent, as this falls within the restrictions set out in the table of kindred and affinity in Schedule 1 to the Marriage Act 1984. Otherwise there are no restrictions on marriage within an adoptive family.

197. *Subsection (2)* lists other enactments which deal with questions of nationality and immigration and to which the general principle within *clause 84* also do not apply.

Clauses 91 and 92 – Pensions and Insurance

198. *Clause 91* provides that *clause 84(3)* (which states that an adopted child is to be treated only as the child of the adopter(s) or, in the case of an adoption by a partner of a parent,

only as the child of the adopter and the natural parent to whom he is a partner) does not affect an adopted person's entitlement to a pension payable to or for his benefit which is in payment at the time of his adoption.

199. *Clause 92* provides that any rights and liabilities under any insurance policy that a natural parent has effected for the payment on the death of his child of funeral expenses are transferred by virtue of the adoption of that child to the adoptive parents. The adopters are to be treated as if they took out the policy themselves. *Subsection (2)* makes clear that references in *subsection (1)* to adoptive parents are to be read, in the case of an adoption by a partner or a parent, as referring to the adopter and the other one of the couple.

Part 10 –The Registers

Clauses 93 and 94 – Introductory and Interpretation

200. *Clause 93* introduces Part 10 in that it will deal with registration issues surrounding adoption and the duties placed upon the Registrar General. *Clause 94* defines some of the references in this Part.

Clause 95 – Adopted Children Register

201. *Clause 95* places a duty upon the Registrar General to continue to maintain the Adopted Children Register and provides for entries to be made in the register (*subsection (1)*). *Subsection (2)* provides that the Adopted Children Register is not to be open to public inspection or search. *Subsection (3)* provides that entries may not be made on the Register unless they are made by adoption orders or by the amendment of adoption orders (*subsection (6)* and Schedule 1).
202. *Subsection (4)* provides that a certified copy of an entry on the Register is evidence of an adoption to which it relates. *Subsection (5)* provides that where the birth information is contained in the Adopted Children Register, a certified copy of that entry is to be treated as a certified copy of an entry in the registers of live births.

Clause 96 – Searches and copies

203. *Clause 96* places a duty on the Registrar General to maintain an index of the Adopted Children Register at the Central Registry (*subsection (1)*). *Subsection (2)* provides that any person may search the index of the Register and obtain a certified copy of any entry where the Registrar General is satisfied that it is appropriate to do so. However, a person is not entitled to have a certified copy of an entry in the Adopted Children Register relating to an adopted person who has not attained the age of 18 years unless prescribed particulars have been provided to the Registrar General (*subsection (3)*).
204. *Subsection (4)* states that 'prescribed' means regulations made by the Registrar General with Departmental approval. *Subsection (5)* provides that the terms, conditions and regulations as to payment of fees, otherwise applicable under the Civil Registration Act 1984, are to apply in respect of searches, and supplies of certified copies, under *subsection (2)*.

Clause 97 – Connections between the register and birth records

205. *Clause 98* places a duty on the Registrar General to 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 Adopted Children Register (*subsection (1)*). *Subsection (2)* provides that public access to this index is prohibited.
206. *Subsection (3)* provides that any such information held under *subsections (1)* and *(2)*, 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 General in accordance with this section.
207. *Subsection (4)* provides that in relation to a person adopted before the appointed day a court may in exceptional circumstances order the Registrar General to give such information to a person. The appointed day is defined in *subsection (9)* as the day appointed for the commencement of Part 7.
208. *Subsection (5)* provides that the Registrar General is to provide on application the appropriate adoption agency with any information mentioned in *subsection*

(3). *Subsection (6)* provides that for people adopted before the commencement of Part 7 Schedule 2 to this Bill applies instead of *subsection (5)*.

209. *Subsection (7)* enables the Registrar General to make regulations to set out the manner in which applications must be made by an adopted person aged under 18 who intends to be married requesting information as to whether the person whom they intend to marry may be within the prohibited degrees of relationship for the purpose of the Marriage Act 1984 or Civil Partnership Act 2011.

210. *Subsection (8)* enables the Registrar General to require the payment of a prescribed fee in respect of information given under this Part.

Clauses 98 and 99 – Adoption Contact Register

211. *Clause 98* places a duty on the Registrar General to establish and maintain at the Central Registry, in accordance with regulations, a register to be known as the "Adoption Contact Register" (*subsection (1)*). The Adoption Contact Register is a register in two Parts designed to facilitate contact between adopted persons and their birth relatives where both parties have expressed a wish for such contact (*subsection (2)*).

212. *Subsection (3)* enables the Registrar General to prescribe in regulations the information about adopted persons to be included in Part 1 of the Adoption Contact Register. *Subsection (4)* provides that the Registrar General may make an entry for an adopted adult in Part 1 of the Register if a record of his/her birth is kept by the Registrar General and the Registrar General is satisfied that the adopted person has such information necessary to obtain a copy of his/her birth record.

213. Under *subsection (5)* Part 2 of the Adoption Contact Register contains prescribed information about relatives of adopted persons who express a wish to make contact with an adopted person. *Subsection (6)* provides that the Registrar General may only make an entry in Part 2 of the Register for a person who has attained the age of 18 and if the Registrar General is satisfied that the person is a relative of an adopted person and has such information as is necessary to enable that person to obtain a certified copy of the record of the adopted person's birth.

214. *Subsection (7)* permits the Registrar General, on consultation with the Department, to provide for the disclosure of information contained in one Part of the Register to persons included in the other Part of the Register.
215. *Subsection (8)* provides that regulations may be made by the Registrar General relating to the disclosure of information in *subsection (7)* and to set fees for the making or alteration of entries in the Register, and the disclosure of information contained in it.
216. *Clause 99* provides that the Adoption Contact Register is not open to public inspection or search. 'Relatives' are also defined in, and for the purposes of, this clause.

Part 11 – Adoptions with a foreign element

Clause 100 – Introductory

217. *Clause 100* introduces Part 11 and sets out what is covered.

Clause 101 - Restrictions on bringing children in

218. *Clause 101* imposes restrictions on British residents bringing (or causing someone else to bring) a child habitually resident outside the British Islands into the Island with the intention of adopting the child, unless the person complies with prescribed requirements and meets prescribed conditions in this Part.
219. It also makes it a criminal offence for a British resident to bring or cause someone else to bring a child habitually resident outside the British Islands who he has adopted within the last six months into the Island, unless they comply with prescribed requirements and meets prescribed conditions. A person would be liable on summary conviction to up to six months' imprisonment or a fine not exceeding the statutory maximum, or both, or, on Information, to up to twelve months' imprisonment or an unlimited fine, or both.
220. Regulations can be made to require the British resident to be assessed and approved as suitable to adopt by an adoption agency prior to bringing a child into the Island.
221. The restrictions in this section do not apply if the child is intended to be adopted under a Convention adoption order as the provisions of the Hague Convention will apply.

Clause 102 – Power to charge

222. *Clause 102* allows the Department to charge a fee in relation to adoptions with a foreign element however the income from the fees under this clause cannot exceed the total cost of providing the services for which the fees are imposed.

Clause 103 – Giving parental responsibility prior to adoption abroad

223. The court may make an order giving parental responsibility to prospective adopters adopting a child outside of the Island. Requirements as to residence, domicile etc. have to be met and any requirements prescribed by regulations must be satisfied.

Clause 104 – Restriction on taking children out

224. Restrictions are imposed by this clause stating that if a child is a resident of the Republic of Ireland or habitually resident in the British Islands then they must not be removed from the Island to a place outside of the British Islands to be adopted unless the provisions of *subsection (2)* are met. It is an offence to remove a child in contravention of this clause (*subsection (6)*).

Clause 105 – Power to modify sections 102 and 104

225. This clause provides that regulations can provide that clause 102 doesn't apply if the adopter (or prospective adopter) are natural parents, natural relatives or guardians of the child in question, or the British resident in question is the partner of a parent of the child, and any prescribed conditions are met (*subsection (1)*). Regulations under *subsection (2)* provide that clause 103(1) may apply with modifications, or not at all in cases similar to subsection (1).

Clause 106 – Overseas adoptions

226. Clause 106 provides that regulations can be made to state what requirements should be met to be an overseas adoption for the purposes of the Bill.

Clause 107 – Modification of section 84 for Hague Convention adoptions

227. *Clause 107* provides that where the court, on an application, is satisfied that each of the conditions set out in *subsection (2)* are met, it may direct that *clause 84(3)* (which

provides for the status conferred by adoption) does not apply or does not apply to any extent which may be specified in the direction. This is due to the different types of adoptions permitted in other jurisdictions, such as simple adoptions.

Clause 108 – Annulment etc. of overseas or Hague Convention adoptions

228. This clause provides that, subject to a court order, a Convention adoption or Convention adoption order can be annulled if contrary to public policy (*subsection (1)*). The court may also provide that either an overseas adoption or determination under clause 110 ceases to be valid on the grounds that the adoption or determination is contrary to public policy or the authority which purported to authorise the adoption was not competent to entertain the case, or decide the extent to which a determination under clause 110 has been affected by a subsequent determination under that clause (*subsection (2)*).

Clause 109 – Section 108: Supplementary

229. Applications for annulments in *clause 109* must be made in the prescribed manner and within the prescribed period.

Clause 110 – Overseas determinations and orders

230. This clause provides for the recognition of adoption orders or Convention adoption orders where such orders are made by a Convention country, British overseas territory or the Channel Islands. This clause is subject to clause 108.

Clause 111 – Application of UK legislation

231. This clause allows the application, by regulations, of UK legislation to the Island in relation directly or indirectly, to the adoption of children; this includes legislation relating to the Hague Convention. For example, the Island would follow the UK in terms of any Hague Convention updates, so it makes sense for UK provisions to be adopted here instead of having to make our own, in effect, duplicate legislation. There is also the ability for this applied legislation to be subject to exceptions, adaptations and modifications as may be specified in regulations.

Part 12 – Modification and Amendments of the Children and Young Persons Act 2001

232. This Part amends the Children and Young Persons Act 2001 ("2001 Act"), with *clause 112* introducing the Part.

Clause 113 - Acquisition of parental responsibility by step-parent

233. *Clause 113* amends section 4 (acquisition of parental responsibility by natural father) of the 2001 Act by inserting in a new section 4A which enables a step-parent to acquire parental responsibility for a child of their spouse. This may be acquired either by agreement between the step-parent and the parents who have parental responsibility for the child or by order of the court. This is intended to provide an alternative to adoption where a step-parent wishes to acquire parental responsibility for their step-child. Parental responsibility can then be held by both birth parents and the spouse.

Clause 114 - Restrictions

234. *Clause 114* amends section 13 (leave to apply for s.11 order) of the 2001 Act to insert a new subsection (3) which will determine the period in which a child must have lived with foster parents before the foster parent can apply for leave of the court to make an application for the adoption of a child.

Clause 115 – Residence orders: extension to age of 18

235. *Clause 115* amends section 16 (effect of residence order) of the 2001 Act to insert new subsections (6) and (7) so that when a court makes a residence order in favour of a person who is not the parent or guardian of the child, it can be extended to the age of 18 (rather than 16). This is to provide the child with the additional security of being cared for up to the age of 18. Consequential amendments are then made to sections 14(4) and 15(3)(b) of the 2001 Act.

Clause 116 – Provision of accommodation

236. *Clause 116* amends section 25 (provision of accommodation) of the 2001 Act to insert a new paragraph (ba) in subsection (1) relating to the provision of accommodation to a

child who is in the care of the Department. This amendment allows the Department to receive a child into its care where the adoptive placement or placement order has broken down and the child was ordinarily resident outside the Island. The local authority in the area in which the child is ordinarily resident must take over the provision of the accommodation within 28 days of being notified by the Department or any longer period as prescribed by regulations.

Clause 117 –Approved foster carers

237. *Clause 117* amends section 26 (manner in which accommodation may be provided) of the 2001 Act to insert a new subsection (4). This amendment provides that where the Department are looking after a child and are considering adoption or are satisfied that placement for adoption is applicable but are not yet authorised to place, the Department must consider placing the child with a foster parent who has been approved as a prospective adopter. Regulations can also be made in connection with this clause.

Part 13 – Final Provisions

Clause 118 and 119 – Introductory and Restrictions on advertisements etc. and Restrictions on advertisements etc.

238. *Clause 118* introduces Part 13 and outlines additional matters addressed in this Part. *Clause 119* deals with the restriction on advertisements. This restricts the publication of advertisements indicating that the parent or guardian of a child want that child to be adopted, that a person wants to adopt a child, or that persons other than adoption agencies are willing to make arrangements for the adoption of a child. The Department may by order amend this clause to take into account any technological developments relating to the publication of advertisements.

Clause 120 – Offence of breaching restriction under section 120

239. *Subsection (1)* provides that it is an offence to breach *clause 120(1)* and the penalties for such contravention. *Subsections (2) and (3)* address matters relating to a defence against an offence under *subsection (1)*. *Subsection (3)* provides for time limits for proceedings relating to an offence under this clause.

Clause 121 – Submission of information to the Adoption and Children Act Register

240. *Clause 121* provides that an adoption agency may submit prescribed information to the Secretary of State to allow an entry on the Adoption and Children Act Register. This is a register covering England and Wales and contains details of children who are suitable for adoption and prospective adopters who have been approved to adopt a child. Inclusion on the register is applicable when there is no local match for the child. This is a UK register established by section 125 of the Adoption and Children Act 2002 (Parliament). This clause provides a link to this register so that children from the Island can be placed on this register if adoption off Island is appropriate.

Clauses 122 and 123 – Amendments, transitional and transitory provisions, savings and repeals and Orders, rules and regulations

241. *Clause 122* provides that Schedules 3 (minor and consequential amendments) and 4 (transitional and transitory provisions and savings) are to have effect.

242. *Subsection (3)* states that regulations may permit a person to exercise discretion about any of the matters in the regulations or provide for their contravention to be an offence.

243. *Clause 123* deals with Tynwald procedures for secondary legislation.

Clause 124 – Rules of procedure

244. This enables Deemsters to make rules to deal with matters of procedure. Rules will say where and to whom notice is given of hearings for placement and adoption orders. *Subsection (2)* provides that such a notice must state the date and place of the application hearing and that the person to whom a notice is given need not attend the hearing; unless they wish to or the court requires it. Notice must be given to those persons listed in *subsection (3)*. *Subsection (4)* permits the publication of proceedings held in private in so far as they relate to contempt of court.

Clause 125 – Supplementary and consequential provision

245. *Clause 125* provides that the Department can make regulations regarding any supplementary, incidental or consequential provision or any transitory, transition or saving provision to give full effect to the Act.

Clause 126 and clause 127 – General interpretation and Repeals

246. *Clause 126* provides for the interpretation of specified terms in the Bill with *clause 127* repealing the entirety of the Adoption Act 1984.

Schedule 1: Registration of Adoptions

247. *Paragraph 1* makes provision for an entry of certain adoptions in the Adopted Children Register in accordance with a direction in the adoption order. It also deals with the marking of entries in the registers of live-births relating to a child who has been adopted and for marking any entries in the Adopted Children Register relating to a child who has been re-adopted.

248. *Paragraph 2* makes provision for registration of adoption orders made in the United Kingdom and the Channel Islands in the registers of live-births. It also deals with marking any entry in the Adopted Children Register relating to a person who has been re-adopted in one of these jurisdictions and for cancellation of any such marking where an order has been quashed, revoked or a successful appeal brought.

249. *Paragraph 3* deals with the registration of other adoptions. It provides for registration of overseas and Convention adoptions which meet specified requirements. These are referred to as “registrable foreign adoptions”.

250. *Paragraph 4* makes provision for the amendment of orders and rectification of entries and markings in the Adopted Children Register and the registers of live-births. Paragraphs 5 and 6 deal with re-registration of births and cancellation in registers on legitimation.

Schedule 2: Disclosure of birth records by Registrar General

251. This Schedule placed a duty on the Registrar General to supply an adopted person with information to enable that person to obtain a certified copy of the record of their birth, subject to a fee.

252. *Paragraph 2* provides that before the Registrar General gives any information to the applicant that they must be informed that counselling services are available to them. The Registrar General must send to the Department or adoption society the information to which the applicant is entitled.
253. *Paragraph 2(3)* provides that information must not be supplied by the Registrar General unless the applicant has attended an interview with a counsellor or is satisfied that the applicant is already aware of the identity of their birth parents.
254. *Paragraph 2(6)* provides that where the Registrar General is prevented by subsection (1) from giving information to a person not living in the Island, they may give the information to anybody whom the Registrar General is satisfied can provide counselling, and that body has notified the Registrar General that it is prepared to provide counselling.

Schedule 3 and Schedule 4

255. *Schedule 3* provides for minor and consequential amendments to the Acts listed in that Schedule.
256. *Schedule 4* deals with transition provisions and savings.