

## **Children and Adoption Bill**

### **Proposed amendment**

#### **Clause 14, Page 17, line 14 at end insert:**

‘At the end of section 84 of the Adoption and Children Act 2002 insert:

“(8) Subsection (4) does not prevent an application being made if the court gives leave to make it.”

At the end of section 141 of the Adoption and Children Act 2002 insert:

“(6) Rules made in respect of proceedings under section 84 of the Act may prescribe

- (i) conditions in respect of which the court must be satisfied before granting leave under subsection (8) and
- (ii) for the court to permit the applicants to take the child who is the subject of the application out of the UK for such period or periods and subject to such conditions as the court thinks fit.”

### **Explanation**

Section 84 of the Adoption and Children Act 2002 provides for the High Court to be able to make an order granting parental responsibility to applicants who are not domiciled or habitually resident in the UK when they wish to take a child out of the country for the purpose of adoption. Section 84(4) imposes a requirement for the child to have lived with the applicants for at least 10 weeks before an application may be made under this section. A similar provision in section 46 of the Act prescribes various minimum periods for which the child must have lived with the applicants before an application may be made for an adoption order, but this section also allows for the court to give leave for some applications to be made before the usual period has expired.

The requirement for the ten week minimum period is of course designed to safeguard the child and to ensure that the child and adopters have time to become acquainted with each other before leaving the jurisdiction. However, since the applicants will by definition be habitually resident in another country, it will often be not merely difficult but impossible for them to live in this country for a minimum period of 10 weeks with the child before making an application (and very possibly remaining here for still longer pending the outcome of the application.) The most likely situation in which it is desired to achieve an adoption overseas of a child from this country is where there is already some connection, most likely, but not necessarily, a blood relationship. In some circumstances the child may already be well acquainted with the proposed adopters (for example having spent holidays with them) but the existing provision in the Adoption and Children Act does not allow any flexibility or exercise of discretion. The amendments proposed would allow this flexibility but would permit Rules of Court to provide further safeguards if this were thought necessary. It is important to bear in mind that section 84 applications can in any

event only be made in the High Court. It is not suggested that a final order under section 84 should be made before the child has lived with the applicants for at least the 10 weeks required, nor is it suggested that it would **always** be appropriate or helpful for the child to be permitted to leave the country with the prospective adopters without a period living with them, but in order for the Court to be able to achieve the outcome that best meets the child's needs it is essential that it should be able to consider all the circumstances and form a view as to whether sufficient other safeguards are in place to permit the child to leave the jurisdiction. Without this, some children may be deprived of the possibility of secure family life with members of their extended family, or with adopters who share aspects of their heritage and culture.

Deborah Cullen  
BAAF  
13 March 2006