



Helping women
through the law



Your Children, Your Rights

A Guide to Adoption for Women Prisoners





Background

In 2007 Action for Prisoners' Families (APF) produced a booklet for women prisoners called 'Staying in Touch'. The booklet provided information on letters, telephone calls, visits, etc. and the idea was that it would be given out on reception and at induction. In 2008, in a collaboration between APF and Clean Break, 'Missing Out', a play by Mary Cooper was toured to many women's prisons. The play and workshop which accompanied it were well received by staff and women prisoners. Having access to women's prisons gave us the opportunity to find out whether 'Staying in Touch' was being given out. We found that it rarely was and that many prisons didn't even know about it despite information about it having been sent to all prisons. It has now been distributed across the women's estate.

In talking to the women about the issues which arose from the play, we found there was little or no written information about their rights and entitlements regarding their children. To this end we are producing four guides – this is the first – to bridge that gap and to give prisoners (and staff themselves) the information they need about their children. The guides have been written by the organisation Rights of Women. Rights of Women is an organisation committed to informing, educating and empowering women concerning their legal rights.

About this guide

The issues relating to adoption can be complex and we have provided a very basic overview of the words used, law and court practice and procedure. We would also strongly advise you to seek legal advice by either telephoning Rights of Women legal advice line on 020 7251 6577 Tues, Wed and Thurs 2-4 and 7-9, and Fri 12-2, or a solicitor.

Please note that the law as set out in this briefing is the law as it stood at the date of publication. The law may have changed since then so it would be best to take up to date legal advice. Rights of Women cannot accept responsibility for any action taken on the legal information contained in this briefing. It is designed to give general information only.

Using this Guide

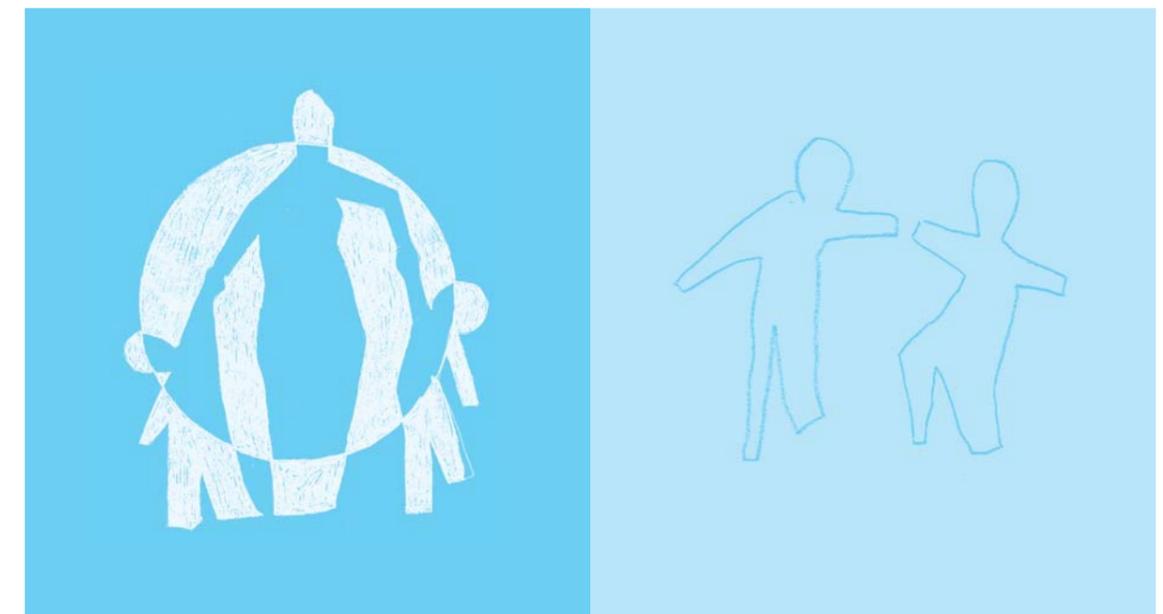
We are aware that there are often difficulties for women in accessing information and getting support in prison. We have included web addresses in the 'Useful Contacts' section at the end although we are aware that prisoners do not have access to the internet. This is because the briefings will be available to staff as well as prisoners and they will also be available to download on our websites, so friends or family, who are more likely to have internet access, may be able to help out with accessing information.

The list of people who may be able to help you in prisons, is a very general one, and it may be that someone totally different can help you out, or a representative from an outside organisation. It is by no means an exhaustive list.

Introduction

There are many reasons that children are adopted. You may choose to put your child up for adoption because you feel you cannot appropriately meet his or her needs or because you believe your child will have a better life in a different family. Alternatively, social services may decide that you are not able to meet your child's needs and apply to the court for your child to be adopted. However, this will only happen if the court decides that it is in your child's best interests.

This leaflet provides an overview of the law and procedure relating to adoption from the point of view of the birth mother.





What is adoption?

Adoption is a way of providing a new family for a child who is not able to be brought up by his or her birth family. The child becomes a full member of the adoptive family and in the eyes of the law stops being a member of the birth family. It is as if he or she has been born of his or her adoptive parents.

Parental Responsibility

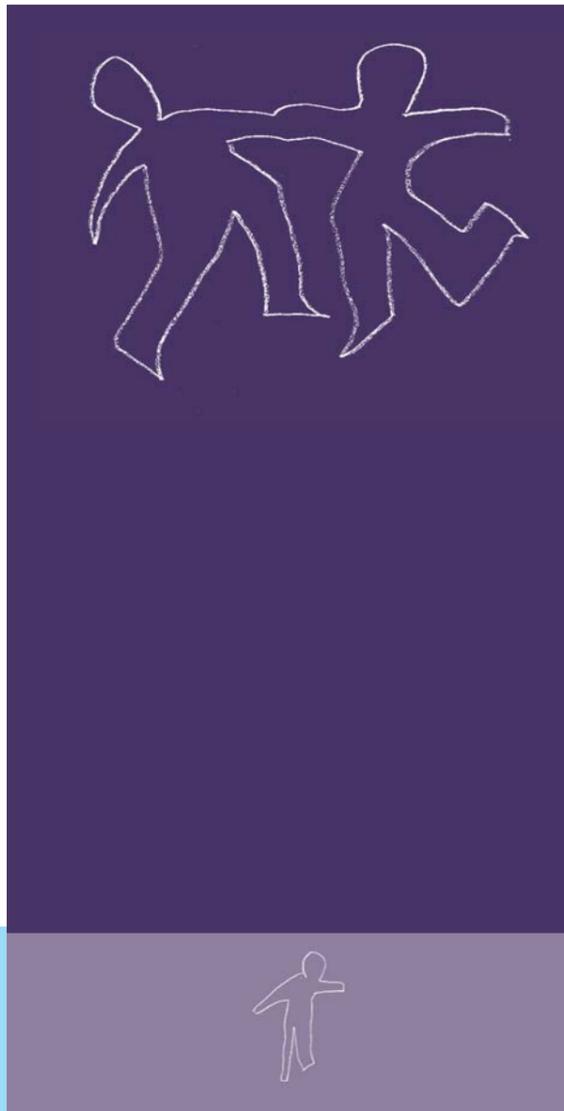
As the biological (birth) mother of your child you automatically have parental responsibility (PR) for your child.

PR is the responsibility that a parent has for a child rather than the rights he or she has over the child.

If you have PR you can make or be involved in the important decisions necessary in your child's life including education, health, medical treatment, religion and the day to day care provided to your child. For further information see **A Guide to Parental Responsibility** in this Rights of Women/Action for Prisoners' Families series (**'Your Children, Your Rights'**). You will still have PR for your child if you are in prison, however the extent to which you can exercise PR will be limited by the fact you are not physically there to look after your child. The **only** way you can **lose** PR is if an adoption order is made. In some circumstances you may be able to maintain contact with your child after adoption.

The Law

The law relating to adoption is set out in the **Children Act 1989**, the **Adoption and Children's Act 2002 ('the Act')** and the **Family Procedure (adoption) Rules 2005**.



Placement for adoption

The decision to place a child for adoption is an important one and affects the lives of all the people involved. **Placement for adoption** is the first step in the adoption process. If a child is placed for adoption this means that a local authority (LA) or an adoption agency can choose possible adoptive parents and place your child with them to live. Your child can only be placed for adoption with your consent **or** where you have not given your consent and the court has made a **placement order**.

Your PR for your child does not end if your child is placed for adoption. PR is shared between the birth parents and the local authority or adoption agency, as well as any possible adoptive parents. However, the LA or adoption agency will decide the extent to which you can exercise your PR and may overrule decisions that you make on issues such as your child's education.

Placement for adoption with your consent

Adoption with your **consent** (agreement) means that you fully understand the consequences of having your child adopted and that you are willing for this to happen. If you are considering having your child adopted you should seek legal advice and you may be eligible for some free legal help (see 'Useful Contacts').

The court will ask an independent social worker from CAFCASS (called a reporting officer), to visit you in prison and make sure that you understand the consequences of adoption. If the reporting officer is satisfied that you agree to the adoption you will be asked to sign a formal document called a Form A104 Consent to Adoption. This form will then be given to the court by the reporting officer. If the court is satisfied that you have given your full and free consent to have your child adopted, your child will be placed for adoption by an adoption agency.

CAFCASS stands for Children and Family Court Advisory and Support Service. It is independent of the courts, social services, education and health authorities and all similar agencies.

If you consent to the adoption of your child you must be informed of every stage of the proceedings and you may attend any court hearings, unless you specifically request that you do not want to be informed. It is, however, a legal requirement that you must be told in advance about the date of the final adoption hearing, regardless of whether you want to be informed, although you do not have to attend this hearing.

What if you change your mind?

You can withdraw your consent up until the point where the possible adoptive parents (the people who want to adopt your child) have applied for a **final adoption order**. The possible adopters' application can only be made once the child has been resident with the adoptive parents for **10 weeks**.





Placement for adoption without your consent

If you do not want your child to be adopted, the court may decide that your consent is not necessary.

The local authority (LA) can apply to the court to have your child placed for adoption without your consent and this application will only be made if the LA has applied for a care order in respect of your child. These proceedings (often known as 'care proceedings') may start if the LA has serious concerns about your child's safety and wellbeing. For more information about care proceedings please see APF's/Rights of Women's **Guide to Children and the law: when social services get involved** in this series.

As your child's mother you must be kept informed at every stage of the care and adoption proceedings and you can attend with legal representation (a lawyer/solicitor) and oppose the making of a placement order. The court has a duty to consider your views before making a decision about placing your child for adoption or making a care order.

When a placement order is made, any existing care order is suspended and any contact or residence orders that are in place will no longer have effect, but the court must consider whether to make an order for contact when making the placement order (please see 'Useful Contacts').

How will the court decide whether a placement order should be made?

When making decisions about adoption the court needs to consider a great deal of evidence and must put the child's long term welfare first.

When deciding to place a child for adoption the court must be satisfied that either

- (1) the birth parents have agreed to the adoption **or**
- (2) the birth parents do not consent (agree) to the adoption but one of the following situations applies:
 - a) the birth parents cannot be found. For example if a child has been abandoned by his or her mother and the mother cannot be found;
 - b) the birth parents are not able to consent, for example if one or other is suffering from mental illness;
 - c) the court decides that the child's welfare is more important than getting the consent of the birth parents. So although you may not want your child to be adopted, if the court thinks that it is best for your child, they can decide that your child should be adopted.

A placement order has a long term effect on both the birth parents and the child. The court will not make a placement order lightly and can only make the order if it is satisfied that it is better for the child to make the order than not to do so.



Revoking (formally cancelling) a placement order

Usually a placement order lasts until an adoption order is made or your child reaches 18 years old or marries or enters a civil partnership. If a placement order has been made and your child has not been placed to live with possible adoptive parents you can apply to the court for permission to make an application to have the placement order revoked (or brought to an end).

The court will only allow you to make an application to revoke the placement order if you can prove that your circumstances have changed. The court will only decide to revoke the order if it is in the best interests of your child.

If a placement order has been made, and your child has not yet been placed with possible adoptive parents, and you have made an application to revoke the placement order then your child should not be placed for adoption without the court's permission.



Adoption orders

Once your child has been placed with possible adoptive parents for 10 weeks, the adoptive parents can apply for a final adoption order. An adoption order will end your parental responsibility (PR) for your child. If an adoption order is made your child will live permanently with the adoptive parents and you will not have the right to be involved in decisions with regard to your child's life or day to day care. The order will create a new parent / child relationship between the child and his or her adoptive parents. Only the adoptive parents will have PR and it will be as if they are your child's birth parents.

You will be sent a letter telling you the date, time and place of the final adoption hearing and you can attend this with your solicitor or barrister. At this hearing you can make an application to revoke the placement order and apply for a residence order.

When the court is making a decision about adoption, the law says that the child's welfare throughout his or her life must be the court's "paramount consideration." This means it must consider the child's welfare above everything when making the decision, in particular:

- a) your child's wishes and feelings, depending on his or her age and understanding (generally the older the child is, the more attention the court will pay to those wishes and feelings),
- b) your child's particular needs – physical, emotional and educational needs (this includes practical needs such as accommodation and food as well as love and affection),
- c) the likely effect on your child throughout his or her life of no longer being a member of his or her birth family and of becoming an adopted person,

d) your child's age, sex, background and any of the child's characteristics which the court or adoption agency considers relevant (this includes your child's religious and cultural needs as well as your child's age. Adoption is regarded as more suitable for children below the age of 5),

e) any harm, abuse, or neglect your child has suffered or is at risk of suffering,

f) any relationship which your child has with you and their father, any other relatives or any other person the court believes to be close to the child such as a family friend or step parent, in particular:

- i. the likelihood of these relationships continuing and how good it will be for your child to continue these relationships,
- ii. the ability and willingness of any of these people to provide your child with a safe and stable home and upbringing, and the wishes and feelings of these people.

This is a complex area of law and if you wish to oppose the making of an adoption order you need to seek legal advice from a child care solicitor (see 'Useful Contacts').

Once a final adoption order is made it cannot be changed: the effect is permanent.

Alternatives to adoption

There are a number of long term arrangements for the care of your children, which could be alternatives to adoption. While you are in prison your child may be looked after by a friend or relative under a residence order or the local authority may apply to the court for a care order and place your children in foster care. Alternatively you may agree to your child being accommodated voluntarily. This means that rather than the local authority seeking a court order, you would agree with your local authority to your child being placed with a foster carer while you are in prison.

For more information about these alternatives please see APF's/Rights of Women **Guide to Children and the law: when social services are involved** and **Guide to Children and the Law: When families can't agree.**

Contact

If your child is placed for adoption any existing contact orders will no longer be valid. You might be able to reach an agreement with your child's adoptive parents that you can have contact with your child and the court must consider the arrangements for you to have contact with your child when making a placement order or an adoption order. The court can decide to make a contact order even if you don't ask for one. If you wish to make an application for contact seek legal advice from a solicitor.

Who can help you in the prison?

- A solicitor (see useful contacts)
- The Legal Aid Officer
- The Offender Management Unit is the link between you and social services and will also be attending Family Court
- Prison library
- Prison chaplain
- The CABx (Citizens Advice Bureaux) – they may come into the prison on a regular basis. Alternatively, you will need to get someone on the outside to contact them on your behalf, or you can telephone them.

The experiences of mothers in prison

Cathy

Cathy wanted to know what sort of people had adopted her children. After discussion with a worker in the prison she decided she'd like to meet them. The adopters were approached through Social Services and agreed to come to the prison to meet Cathy.

Cathy found the meeting difficult but was glad she went through with it and felt reassured that her children were well cared for and loved and that the adoptive parents would talk to the children about her.

Anne

Anne was serving a prison sentence for drug related offences. She did not know what had become of her two daughters although she knew the plan was for adoption. Anne saw a birth parent worker from BirthTies, a project run by After Adoption. She arranged for the social worker to visit Anne in prison to explain the process in more detail. Anne was advised to seek legal advice whilst in prison. She also needed support in talking through her feelings of loss as she was unable to care for her daughters.

Barbara

Barbara's 8 year old son Callum had been adopted 2 years previously as she had been unable to protect him from her violent partner. When the child was taken into care Barbara became very depressed and refused to co-operate with Social Services. She worried about whether her son was okay. Barbara remembered 'letterbox' being mentioned but at the time felt unable to cope with this. Whilst Barbara was in prison a project worker contacted the letterbox administrator and found there were letters on file from the adoptive family providing news about Callum. Social Services had no forwarding address for Barbara. She was assisted in replying to the letters and was relieved to receive regular news of her son's welfare.

Rights of Women offer **free confidential legal advice** on family law including divorce and relationship breakdown, children and contact issues, domestic violence and lesbian parenting call the **Rights of Women Advice Line** on **020 7251 6577 (telephone)** or **020 7490 2562 (textphone) Tuesday, Wednesday and Thursday 2pm-4pm and 7pm- 9pm Friday 12noon – 2pm** or write to Rights of Women, 52-54 Featherstone Street, London, EC1Y 8RT.

For free confidential legal advice on criminal law, sexual violence or immigration please call Rights of Women Sexual Violence Advice Line on **020 7251 8887 (telephone)** or **020 7490 2562 (textphone)**



Useful Contacts

You may also find the following contacts useful:

(Please note, we have provided web site addresses although we realise the majority of prisoners do not have internet access. This is because prison staff may also use these booklets on your behalf and they *will* have internet access).

Action for Prisoners' Families (APF)
www.prisonersfamilies.org.uk

Tel: 0208 8812 3600.

Unit 21, Carlson Court, 116 Putney Bridge Road, London, SW15 2NQ.

APF is the national organisation for those interested in the well being of prisoners' families. It works to reduce the negative impact of imprisonment on families.

After Adoption
www.afteradoption.org.uk

General Number: 0161 839 4932.

After Adoption is a voluntary adoption agency and one of the largest providers of adoption support services in the UK.

Head Office, Unit 5 Citygate, 5 Blantyre Steet, Manchester M15 4JJ.

BirthTies **0800 840 2020** is the After Adoption helpline for birth parents whose child is at risk of being adopted or has been lost to adoption.

CAFCASS
www.cafcass.gov.uk/

This is the Children and Family Court Advisory and Support Service. CAFCASS is independent of the courts, social services, education and health authorities and all similar agencies.

Community Legal Advice
www.communitylegaladvice.org.uk

Tel: 0845 345 4345

(to find a family solicitor)

HM Court Service
www.hmcourts-service.gov.uk

National Family Mediation (NFM)
www.nfm.org.uk

Tel: 01392 271610

NFM is a network of local not-for-profit family mediation services in England and Wales which offers help to couples, married or unmarried, who are in the process of separation and divorce.

Gingerbread
www.oneparentfamilies.org.uk

Tel: 0800 018 5026

Gingerbread works for and with single parent families.

Prisoners' Families' Helpline
www.prisonersfamilieshelpline.org.uk

Freephone 0808 808 2003

Resolution
www.resolution.org.uk

Tel: 01689 820272

(for finding a family solicitor)

Samaritans
www.samaritans.org.uk

Tel: 08457 909090

South West Adoption Network
www.swan-adoption.org.uk

Tel: 0845 601 2459

(for women based in the South West)

Women in prison
www.womeninprison.org.uk

Freephone 0800 953 0125

Women in Prison supports and campaigns for women offenders and ex-offenders.



Rights of Women,

52-54 Featherstone Street,
London, EC1Y 8RT,

www.rightsofwomen.org.uk

Tel: 020 7251 6575

Industrial and Provident Society No: 23221R



Action for Prisoners' Families,

Unit 21, Carlson Court, 116 Putney Bridge Road,
London, SW15 2NQ.

www.prisonersfamilies.org.uk

Tel: 0208 812 3600

Charity No. 267879, Company No. 1168459

This guide is the first in the series 'Your Children, Your Rights'.

Three further guides are available on:

- Parental Responsibility
- Children and the Law: when families can't agree
- Children and the Law: when social services are involved

Copies of these guides will be given out on reception and/or induction. There will also be copies available in libraries. If you have any problems getting hold of copies please contact Action for Prisoners' Families.

APF would like to thank Wates Foundation and Nationwide Foundation for supporting these briefings and After Adoption for commenting on this briefing and providing case studies. We would also like to thank staff and women at Send and Morton Hall for their feedback on the contents.