



## Past adoption practices and the disclosure of adoption information

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Various groups have campaigned for the Westminster Government to apologise for policies amounting to 'forced adoption' in the UK in the 1940s and 1950s. Pressure on the Government to apologise gathered momentum following a [national apology](#) in March 2013 by the Australian Prime Minister for forced adoption practices in the 1940s and 1950s in Australia.

This note provides a brief history of adoption legislation and information on historical forced adoption practices. It also provides information on mechanisms for adopted children, birth parents and other relatives to access adoption information and establish contact.

This note applies to England and Wales.

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## 1 Background

Various groups have campaigned for the Westminster Government to apologise for policies amounting to 'forced adoption' in UK in the 1940s and 1950s. There have also been a number of Early Day Motions tabled by Members of Parliament calling for an apology, for example an [Early Day Motion](#) (EDM 301), sponsored by John Leech MP, on the subject of (historical) forced child adoption was tabled on 1 September 2014.

That this House recognises the suffering that forced child adoptions during the 1950s, 1960s and 1970s caused, which took place owing to social pressures on women who had children outside marriage; notes the unacceptable adoption and care practices of the past, such as not giving information about welfare services including housing and financial help which were available at the time, and not questioning whether women putting their children up for adoption had given informed consent; further recognises the negligence of previous governments, with regard to ensuring that the care provided for unmarried mothers was appropriate and that they and their children were not mistreated or discriminated against, resulting in many women suffering traumatising pre and post-natal experiences and children being denied contact with their birth parents; further notes that the Australian Prime Minister has in 2014 apologised to the victims of forced adoptions in Australia; and therefore calls on the Government to apologise in order to go some way towards helping the parents and children who were victims of these practices.<sup>1</sup>

The list of signatures can be viewed on the [Parliament website](#).

The Children's Minister, Edward Timpson MP has also been asked about [Government support for victims of forced adoptions](#):

**Ian Paisley:** To ask the Secretary of State for Education, what steps her Department has taken to support parents and children who were victims of forced adoptions in the 1950s, 1960s and 1970s.

**Edward Timpson:** I have a great deal of sympathy for those parents and children who were affected by pressures, during the post-war years, to give children up for adoption. Since the 1970s there have been major shifts in the way society sees the family, single mothers, and the needs of children and successive governments have done much to collectively resolve the social ills of the past. Society has become less judgmental and it is now, rightly, no longer considered a stigma for an unmarried mother to keep her baby.

The importance of facilitating greater openness in adoption has been recognised for a number of years. Adopted adults have the legal right to see their birth certificate and their adoption file in order to find out about their family history and the circumstances in which they were adopted. Both adopted adults and their birth relatives are able to apply to intermediary agencies for assistance with tracing family members. Intermediary agencies also provide counselling, support, and advice to adopted adults and birth relatives. Further changes through the Children and Families Act 2014 will extend the provision of intermediary agencies to assist a wider category of relatives,

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<sup>1</sup> EDM 301 [on Forced Child Adoption], 1 September 2014

including the children and grandchildren of adopted adults, to help trace relatives and find out about their family history.<sup>2</sup>

This note provides a brief history of adoption legislation, including on forced adoption practices, and the subsequent reform of the law to allow adopted children, birth parents and others to establish contact.

## **2 A history of legal adoption**

### **2.1 Adoption of Children Act 1926**

The first adoption legislation in England and Wales was enacted in 1926 following recommendations from the Government appointed Hopkinson Committee. The Committee believed that children, who could not be cared for by their birth parents, should be placed in some other home as members of a family, rather than in institutional care. The *Adoption of Children Act 1926* provided the legal framework for the courts to make adoption orders. The Act also gave the courts the discretion to dispense with parental consent to the adoption. The 1926 Act did not ensure the child's full integration into the adoptive family as his succession rights were not affected. The Act also did not make any provision for access, by the child, to his birth records.

In the early days of adoption, the focus was on providing relief for unmarried mothers and satisfying the needs of those couples unable to conceive themselves, rather than on the interests of the children. Despite the passing of the 1926 Act, commentators, such as Professor Stephen Cretney, have stated that adoption remained almost entirely uncontrolled by the state. Adoption orders were evaded by taking possession of a child placed for adoption, concealing his whereabouts, and refraining from applying for the *de facto* adoption to be legalised.<sup>3</sup> Cretney states there were suggestions that adoption agencies took inadequate precautions in deciding whether to place children (often the children of unmarried mothers whose chief anxiety might be to get rid of the child); there were fears that British children were being exported to countries whose laws did not provide for adoption; and that money changed hands.<sup>4</sup>

### **2.2 Changes in 1940s**

Major changes for adopted children were implemented in the 1940s as attitudes towards adoptions were beginning to change. Keating, in *A Child for Keeps*, states that although relinquishing mothers were still looked down upon by society, attitudes were changing towards the interests of the child. She writes:

By the late 1940s the interests of the birth mother had moved firmly into the background and the adoption legislation gave a definite advantage to the interests of the adopters and removed all possibility of the mother knowing who had adopted her child. And although adoptions organised by individuals were still allowed, the adoption process was becoming more regulated to protect the interests of children.<sup>5</sup>

In a section on *Secrecy*, Keating stresses the difficulty in researching past adoption practices:

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<sup>2</sup> [PQ 208527 \[on adoption\]](#), 8 September 2014

<sup>3</sup> Cretney *Family Law in the Twentieth Century – A History*, Oxford University Press, 2003

<sup>4</sup> *Ibid*, p606

<sup>5</sup> Keating, *A Child for Keeps – The History of Adoption in England, 1918-45*, Palgrave Macmillan, 2009, p201

Secrecy is an important issue in the history of adoption but is not an easy subject for historical research of enquiry. So much investigation about it must be anecdotal – relying on individual autobiographies, interviews, rumours or even gossip – or else remain conjecture; inevitably the nature of secrecy means that many people will not speak of their secrets.<sup>6</sup>

The *Adoption of Children Act 1949* (England and Wales), which began as a Private Member's Bill, provided that the placement of children for adoption would thenceforth be supervised by local authorities. It also that provided parental consent to the making of an adoption order, in pursuant to an application, could be given without knowledge of the applicant's identity. Cretney states that in practice "consent could now be given to an adoption by a person about whom the mother knew nothing; and the emphasis originally placed on the need for her to take a personal decision about the adopters' suitability had disappeared."<sup>7</sup> The names of adopters were not disclosed on application forms but serial numbers were used instead. Access to the identity of the parent could only be given if an application was made to the Register General.

In addition, the 1949 Act gave adopted children the same status as birth children giving them the rights to inherit. It made provision for the treatment of adopted people as children of adopters for the purposes of intestacies, wills and settlement.<sup>8</sup>

From 1949, and the beginning of an adoption system that was driven by social workers and an effort to protect children, an increasing number of older children were removed from the care of abusive parents and made available for adoption. Family law barrister, David Bedingfield writes:

The legal concept of adoption began to be seen as a blunt tool that often did not fit the needs of individual children. A middle ground was sought for children who needed substitute families but who also would benefit from continued contact with their birth families.<sup>9</sup>

The *Adoption Act 1950* (England and Wales) consolidated previous legislation, confirming and emphasising the prevailing 'clean break –fresh start' view of adoption.

### **2.3 Access to birth records–developments in the latter part of the Twentieth Century**

In the decades following the 1949 Act, a number of Government appointed committees reported on the issue of allowing adopted children greater access to information about their birth families. In 1972, the Houghton Committee concluded:

We take the view that on reaching the age of majority an adopted person should not be denied access to his original birth records. We therefore recommend that all adopted adults in England and Wales, whenever adopted, should in future be permitted to obtain a copy of their original birth entry...<sup>10</sup>

The Committee's report provided the basis for provisions in the *Children Act 1975* relating to services for adopted adults. The subsequent *Adoption Act 1976* placed a duty on each local

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<sup>6</sup> *Ibid*, p202

<sup>7</sup> Stephen Cretney, *Law reform and the Family*, Clarendon Press, 1998, p192

<sup>8</sup> *The Adoption of Children Act 1949*, s 9

<sup>9</sup> Bedingfield, *Adoption or Special Guardianship? The Impact of Re S, Re AJ and Re M-J*, Family Law Week

<sup>10</sup> Houghton Committee report, 1972 para 303, quoted in Howe & Feast, *Adoption Search & Reunion*; The Children's Society, 2000

authority to provide a comprehensive adoption service to all those involved in adoption including:

- (a) adopted children;
- (b) parents and guardians of such children; and
- (c) adopters and prospective adopters.

The Act acknowledged that people who have had a personal connection to adoption should have a right to a service if they had unresolved issues and counselling needs.

### **3 Current law**

The *Adoption and Children Act 2002* (2002 Act), establishes a statutory code and legal structure regulating the circumstances in which a child can be placed for adoption and the consequences once such a placement is made. The process of placement involves substantial court involvement.

Under the 2002 Act, before a placement for adoption can be made, a parent must be fully engaged in the decision making process, either by express consent or by having the opportunity to contest the issue in court proceedings. If either a parent consents to placement for adoption, or the court makes a placement order, and an adoptive placement is then made, the options for overturning the move towards adoption or challenging the eventual adoption are significantly restricted.

The 2002 Act establishes two routes by which an adoption agency may be authorised to place a child for adoption:

- placement with parental consent;
- placement under a placement order.

#### **3.1 Placement with parental consent**

Section 19(1) of the 2002 Act authorises an adoption agency to place a child for adoption where it is satisfied that each parent or guardian of the child has consented (and has not withdrawn the consent) to the child:

- being placed for adoption with prospective adopters identified in the consent; or
- being placed for adoption with any prospective adopters who may be chosen by the agency.

‘Consent’ means consent given unconditionally and with full understanding of what is involved.<sup>11</sup> Consent to placement for adoption may be withdrawn; however any purported withdrawal will be ineffective if it occurs after an adoption application has been made.<sup>12</sup>

Where consent to placement for adoption has been given, and the child is placed with prospective adopters, if consent is subsequently withdrawn and the parent requests the return of the child, the child must be returned to the adoption agency unless an application is, or has been, made for a placement order and the application has not been disposed of.<sup>13</sup>

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<sup>11</sup> Sections 52(5) and 6, *Adoption and Children Act 2002*

<sup>12</sup> *Ibid.*

<sup>13</sup> Section 32, *Adoption and Children Act 2002*

The local authority must review their decision to place a child for adoption and may seek to protect a child's placement by issuing an application for a placement order after a request for the return of a child has been made.<sup>14</sup>

### ***Placement under a placement order***

A 'placement order' is "an order made by the court authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority".<sup>15</sup>

The court may not make a placement order unless:<sup>16</sup>

- the child is subject to a care order; or
- the court is satisfied that the threshold conditions in s 31(2) of the *Children Act 1989* are met; or
- the child has no parent or guardian; and
- each parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn consent, or the parent's consent should be dispensed with under section 52 of the 2002 Act,.

The threshold conditions under s 31(2) of the *Children Act 1989* require the court to be satisfied that:

- (a) the child is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm is attributable to-
  - (i) 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 to him; or
  - (ii) the child's being beyond parental control.

## **4 Disclosure of adoption information**

The disclosure of adoption information is now governed by the *Adoption and Children Act 2002* and its supporting regulations. The Act makes provision for two adoption registers and for adoption agencies to provide intermediary services to assist applicants in adoption information searches.

The **Adoption Contact Register** exists to assist those adoptees and their natural families who wish to express a view about contact with each other. The register, which is held by the Registrar General,<sup>17</sup> is divided into two parts. In Part 1 are entered the details on any adopted person. Part 2 will contain the prescribed information about any relative who wishes to express a view about contact with the adoptee and who has information necessary to enable him to obtain a certified copy of the adoptee's birth record.<sup>18</sup> This information will only be entered in respect of an adopted person whose birth record is kept by the Registrar General.

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<sup>14</sup> Regulation 38, *Adoption Agencies Regulation 2005* (SI 2005/389)

<sup>15</sup> Section 21(1), *Adoption and Children Act 2002*

<sup>16</sup> Section 21(2) and 3, *Adoption and Children Act 2002*

<sup>17</sup> *Adoption and Children Act 2002*, s 80.

<sup>18</sup> *Ibid*, s 80(5)

The Adoption Contact Register system operates by the Register General transmitting to the adopted person whose name appears in Part 1, the name and address of any relative entered in Part 2 who has asked for contact.<sup>19</sup> The register is not open to public inspection.

The Adoption Contact Register came into existence in 1991 (under *Children Act 1989*) but was enhanced by the *Adoption and Children Act 2002* so an applicant can specify with whom he or she desires contact, or the applicant can specify the person with whom he or she does not want contact. This means that adopted people and birth relatives will be able to have their wish for 'no contact' registered on the Adoption Contact Register. So information on the Register can be shared unless the subject registers a wish for no contact.

The second register is the **Adopted Children Register**<sup>20</sup> kept by the Register General at the General Register Office. Every adoption must be registered in the Adopted Children Register<sup>21</sup> by the Registrar General at the General Register Office. The Adopted Children Register contains the particulars of adoptions authorised by order of a court in England or Wales on or after 1 January 1927. The only information that is available from the Adopted Children Register is a certificated copy of an entry, which is the equivalent of a birth certificate for an adopted person.

An entry on the Adopted Children Register will only contain the adoptive details of a person and has no information that relates back to the corresponding birth entry. On making an adoption order, the court may order that the Registrar General should not reveal the details of the adoption which are recorded in the Adopted Children Register without the leave of the court.<sup>22</sup>

#### **4.1 Person adopted after 30 December 2005 – section 56 information**

In relation to a person who has been adopted on or after 30 December 2005, the disclosure of information relating to his adoption is governed by the *Adoption and Children Act 2002*, sections 56-65 and by the *Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005*.<sup>23</sup> The information covered by these regulations is known as 'section 56 information' by reference to the *Adoption and Children Act 2002*, section 56. The section 56 information that an adoption agency is required to keep includes:<sup>24</sup>

1. the adoption case record;
2. any information that has been supplied by a natural parent or relative or other significant person in the adopted person's life, with the intention that the adopted person may, should he wish to, be given that information;
3. any information supplied by the adoptive parents or other persons which is relevant to matters arising after the making of the adoption order;
4. any information that the adopted person has requested should be kept;
5. any information given to the adoption agency in respect of an adopted person by the Registrar General under *Adoption and Children Act 2002*, s 79(5) (information that would enable an adopted person to obtain a certified copy of the record of his birth);

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<sup>19</sup> *Adopted Children and Adoption Contact Registers Regulations 2005 (No. 924)*, reg 9

<sup>20</sup> *Adoption and Children Act 2002*, Schedule 1

<sup>21</sup> *Adoption and Children Act 2002*, Schedule 1

<sup>22</sup> *Re X (A Minor) (Adoption Details: Disclosure)* [1994] 2 FLR 450; *Re W (Adoption Details: Disclosure)* [1998] 2 FLR 625.

<sup>23</sup> SI 2005/888

<sup>24</sup> *Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005*, regulation 4



6. any information disclosed to the adoption agency about an entry relating to the adopted person on the Adoption Contact Register.

An adoption agency is not required to keep information falling within (2)–(4) above if it considers that to do so would be prejudicial to the adopted person’s welfare or that it would not be reasonably practicable to keep it.<sup>25</sup> Section 56 information must be kept in secure conditions for at least 100 years.<sup>26</sup>

Identifying section 56 information can be disclosed to third parties under limited circumstances. Any section 56 information kept by an adoption agency about an adopted person or a third party and is, or includes, identifying information about the person in question is ‘protected information’ and may only be disclosed by the agency to a person (other than the person that the information is about) in pursuance of [sections 56-61](#) of the 2002 Act.<sup>27</sup> This prohibition does not prevent an agency disclosing information pursuant to a ‘prescribed agreement’<sup>28</sup> or under the *Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005*. A ‘prescribed agreement’ is either one under which either an adoptive parent, or each person who (before the adoption) was a parent with parental responsibility, permits the disclosure of information about himself, or it is an agreement made with any person who is over the age of 18 years at the time that the agreement is made.<sup>29</sup>

An adopted person who has attained the age of 18 years has the right, at his request, to receive from the appropriate adoption agency any information which would enable him to obtain a certified copy of his birth certificate (unless the High Court otherwise orders) or any prescribed information which had been disclosed to his adopters during the adoption process (under the *Adoption and Children Act 2002*, s 54).<sup>30</sup> Any order by the High Court preventing disclosure may only be made on an application by the adoption agency and where the court is satisfied that the circumstances are exceptional.<sup>31</sup> The adopted person also has the right to receive from the court that made the adoption order a copy of documents from the court file.<sup>32</sup>

If the adoption agency does not have sufficient information to allow a qualified person to obtain his birth record, the agency must seek the necessary information from the Registrar General.<sup>33</sup>

Adoption agencies have discretion to disclose material on their adoption records, and must exercise that discretion against the background of the adoption legislation and in the context of the particular circumstances of the case.

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<sup>25</sup> *Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005*, regulation 4

<sup>26</sup> *Ibid*, regs 5 and 6

<sup>27</sup> *Adoption and Children Act 2002*, s 57(1); see *Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005*

<sup>28</sup> *Adoption and Children Act 2002*, s 57(5) and 6

<sup>29</sup> *Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005*, regulation 11

<sup>30</sup> Section 60

<sup>31</sup> *Ibid*

<sup>32</sup> DAI(PCA)R 2005, reg 17

<sup>33</sup> *Ibid* reg 19

## 4.2 Persons adopted before December 2005

For those who were adopted before 30 December 2005, the procedure for tracing birth records is governed by *Adoption and Children Act 2002*, Schedule 2 and the *Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005*.<sup>34</sup>

**Adopted persons** may apply to the Registrar General for such information as is necessary to enable the adoptee to obtain a copy of his birth records. Information held by the Registrar General must be disclosed to the appropriate adoption agency if they make an application in the prescribed form to the Registrar.<sup>35</sup> Alternatively, a person adopted before 30 December 2005 may apply to the court for an order requiring the Registrar General to disclose identifying information to them, provided that there are 'exceptional circumstances'.<sup>36</sup>

Before proceeding with any application an intermediary agency must provide information to the applicant about counselling services that are available.<sup>37</sup> Any application must be handled under the procedure specified in the 2005 regulations.

An intermediary agency may not disclose any information to an applicant about the adopted person without that person's consent.<sup>38</sup> If the adopted person has died or is incapable of giving consent, such information may be given to the applicant.

### Intermediary services for pre-December 2005 adoptions

In addition, an applicant (who may be the adopted person or a relative of his) can make an application under the *Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005*<sup>39</sup> (*AIIS(PCA)R 2005*) for 'intermediary services'.<sup>40</sup> These are defined as a service for the purpose of:

- assisting adopted persons who are over the age of 18 years and who were adopted prior to 30 December 2005, to obtain information in relation to their adoption; and
- facilitating contact between such persons and their relatives.<sup>41</sup>

The services may be provided by a registered adoption support agency or an adoption agency.<sup>42</sup>

An intermediary agency that accepts an application under *AIIS(PCA)R 2005* is not required to proceed with the process if it considers that it would not be appropriate to do so having regard to all of the circumstances of the case, but in particular the welfare of the applicant, the subject adopted person or any other person who may be identified or otherwise affected by the application (particularly if that person is under the age of 18).<sup>43</sup>

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<sup>34</sup> SI 2005/890

<sup>35</sup> *ACA 2002*, s 79(5)

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*, reg 10

<sup>38</sup> *Ibid*, reg 1

<sup>39</sup> SI 2005/890

<sup>40</sup> *AIIS(PC)R 2005* reg 1

<sup>41</sup> *Ibid* reg 3

<sup>42</sup> *Ibid*,

<sup>43</sup> *AIIS(PC)R 2005* reg 6

Before proceeding with any application, an intermediary agency must provide information to the applicant about counselling services that are available.<sup>44</sup> Any application must be handled under the procedure specified in the 2005 regulations.

An intermediary agency may not disclose any information to an applicant about the adopted person without that person's consent.<sup>45</sup> An adopted person may put down a veto under the AIIIS(PCA)R 2005 to the effect that that he does not wish to be contacted by an intermediary agency in relation to an application under those regulations or that he only wishes to be contacted in specified circumstances.<sup>46</sup> To be effective any veto must be in writing sent to the appropriate adoption agency.<sup>47</sup> Where the adoption agency is notified of such a veto, it must keep a written record of it on the adopted person's case record and ensure that it is made known to any intermediary agency that contacts it in relation to an application under AIIIS(PCA)R 2005.<sup>48</sup> Where an intermediary agency is aware that a veto applies, it must not proceed with the application unless the circumstances fall within the exceptions specified in the veto.<sup>49</sup>

The provision therefore allows adopted persons to receive assistance in obtaining information about their adoption and to facilitate contact. However, those intermediary services are not available to other relatives, such as the children of the adoptee. For adoptions made on or after 30 December 2005, when the *Adoption and Children Act 2002* was brought into force, the legal framework under sections 56-61 applies which allows adopted persons and their relatives to access information about the adoption.<sup>50</sup>

The *Children and Families Act 2014* contains a measure to amend the *Adoption and Children Act 2002* to extend the provision of intermediary services to other prescribed persons in addition to the adopted person and the birth family for pre-December 2005 adoptions.<sup>51</sup> It would therefore correct the anomaly that currently exists between pre- and post-December 2005 adoptions. The new provision was inserted as an amendment when the then *Children and Families Bill* was proceeding through the House of Lords. The debate on the amendment can be read on the [Parliament website](#).<sup>52</sup>

Although the provision, section 1 of the *Children and Families Act 2014*, was brought into force on 25<sup>th</sup> July 2014, it requires the Government to lay regulations setting out which persons with a 'prescribed relationship' to the adopted person can also apply for intermediary services. Those regulations have not yet been laid.<sup>53</sup>

## 5 Useful information for adopted people and birth parents

Information on intermediary services is also available on the [Adoption Search Reunion website](#), owned by the charity, British Association for Adoption and Fostering (BAAF).

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<sup>44</sup> *Ibid*, reg 10

<sup>45</sup> *Ibid*, reg 1

<sup>46</sup> *Ibid*, reg 8

<sup>47</sup> *Ibid*

<sup>48</sup> *Ibid*

<sup>49</sup> *Ibid*

<sup>50</sup> Under sections 56-65 of the *Adoption and Children Act 2002*

<sup>51</sup> *Children and Families Act 2014*, section 1

<sup>52</sup> HL Deb 9 December 2013, cc589-94

<sup>53</sup> A [Government consultation](#) on the changes: Department for Education, *Consultation on Intermediary Services For Descendants-Relatives Of Adopted People* 10 April 2014, indicated that regulations would be brought "into force in September 2014"

Further information about tracing adoption records for both adopted people and their birth relatives is set out on the [Gov.uk](https://www.gov.uk) website.

### 5.1 Further reading

- Background information to the development of modern adoption law is set out in the Library research paper to the then [Adoption and Children Bill](#) (RP/01/78) which became the *Adoption and Children Act 2002*.
- Stephen Cretney, *Law reform and the Family*, Clarendon Press, 1998
- Patricia Morgan, *Adoption: The Continuing Debate*, IEA Health and Welfare Unit, 1999
- Howe & Feast, *Adoption, Search & Reunion – The long-term experience of adopted adults*, Children's Society, 2000
- Stephen Cretney, *Family Law in the Twentieth Century- A history*, Oxford University Press, 2003
- Hunter Davies, *Relative Strangers- A history of adoption*, Time Warner, 2003
- Jenny Keating, *A Child for Keeps – The History of Adoption in England, 1918-45*, Palgrave Macmillan, 2009