

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 3

Status of Adopted Children

Section 40 - Status conferred by adoption

157. This section provides for the status conferred by adoption. An adopted person is to be treated in law as if he or she were the child of the adopters or adopter (subsection (1)). Where the adoption is undertaken by a relevant couple under section 29, or a step-parent, civil partner or cohabitant under section 30(3) of the Act, the adopted person is to be treated as the child of the couple concerned (subsection (2)).
158. In the case of an adoption under section 30(3), the adopted person is to be treated in law as if he or she were not the child of any person other than the adopter and the parent (i.e. the other member of the relevant couple (subsection (3))). In all other cases, an adopted person is to be treated as the child of no-one other than the adopters (subsection (4)).
159. By virtue of subsection (5) references to a person's natural parents or any other natural relationship elsewhere in this Act are not affected by subsections (3) and (4).
160. Where an application is made under this section in the case of a person adopted under a Convention adoption (as defined in section 119(1) of the Act), subsections (6) and (7) provide that the Court of Session has discretion to direct that subsection (4) should not apply or that it is only to apply to the extent specified in the direction. The conditions which must be met before such a direction may be given are set out in subsection (6), namely that under the law of the country in which the adoption took place the adoption was not a full adoption (as defined by subsection (8)), that the consents required for adoption have not been given or the UK is not a receiving State and that it would be more favourable to the person for a direction to be given by the court under this provision.