

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 3

Status of Adopted Children

Section 41 - Miscellaneous enactments

161. Although section 40 means that a person is regarded in law as the child of the adopters and not the child of anyone else, section 41(1) provides that this does not affect the rules on marriage to or registration of a civil partnership with a relative. So, while a child's natural parents are, on the making of an adoption order, treated in law as if no longer that child's parents, the ban, for example, on a child marrying his or her natural mother or natural father or forming a civil partnership with either natural parent continues to apply. Similarly, despite the terms of section 40, a child's natural parent remains treated as the child's mother or father and therefore falls within the forbidden degrees for the purpose of the law on incest.
162. Subsection (2) provides that, on the making of an adoption order, the adopter and adopted person are considered for all time coming to be within the forbidden degrees relating to marriage, eligibility to register as civil partners, and incest.
163. Subsection (3) provides that section 40 does not apply for the purposes of the British Nationality Act 1981, the Immigration Act 1971, any instrument having effect under any either of those Acts or any other law which determines British citizenship, British overseas territories citizenship or British Overseas Citizenship.