

# **ADOPTION AND CHILDREN (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Chapter 1**

#### ***The Adoption Service***

#### ***Section 1 - Duty of local authority to provide adoption service***

21. Subsection (1) places a duty on local authorities to provide an adoption service or, to the extent that they already do so, continue to do so. In practice it is likely that all local authorities will provide their own adoption services, but they may contract with another provider which is a registered adoption service to provide these services, as set out at section 2(2).
22. For the purposes of this Act, ‘adoption service’ is defined as services designed to meet the needs in relation to adoption of the persons mentioned in section 1(3).
23. These persons, listed in subsection (3), are: (a) children who may be adopted (for the purposes of providing adoption support, this includes children who have been placed for adoption); (b) persons who have been adopted (this category includes adults who were adopted as children, as well as children who have been adopted); (c) parents and guardians of children who may be adopted (for the purposes of providing adoption support, this includes children who have been placed for adoption); (d) natural parents of persons who have been adopted; (e) persons who, before the placing of a child for adoption or the adoption of a child, treated the child as their child; (f) siblings (whether of the whole-blood or half-blood), natural grandparents and former guardians of children who may be adopted and persons who have been adopted; (g) persons who may adopt a child; (h) persons who have adopted a child; (i) in relation to persons mentioned in (g) or (h), children of, or children treated as children of, such persons (this includes children of the family of adoptive parents); and (j) any other persons who are affected by the placing, proposed placing or adoption of a child.
24. By virtue of subsection (4), an adoption service includes or consists of arrangements for assessing children who may be adopted; arrangements for assessing prospective adopters; arrangements for placing children for adoption; the provision of information about adoption to any of the persons mentioned in section 1(3); and adoption support services.
25. Subsection (5) defines adoption support services as consisting of or including counselling to any of the persons mentioned in section 1(3); guidance about adoption to such persons; and any other assistance in relation to the adoption process that the local authority providing an adoption service in a particular case considers relevant to that case.

## **Section 2 - Carrying out of duties imposed by section 1**

26. Subsection (1) places a duty on local authorities to provide adoption support services in a way that takes account of other services that they provide in carrying out functions which they have under any of the enactments mentioned in section 5(1B) of the Social Work (Scotland) Act 1968, in particular those relating to children. All local authority functions that relate to children should be coordinated in order to provide a cohesive service in the context of adoption support services.
27. Under subsection (2) a local authority may carry out its obligation to provide or continue to provide an adoption service by entering into arrangements with a “registered adoption service” for the provision of the service on its behalf. By subsection (3), a “registered adoption service” means an adoption service within the meaning given by section 2(11) (b) of the Regulation of Care (Scotland) Act 2001, which is registered under that Act.

## **Section 4 - Local authority plans**

28. Section 4 sets out local authorities’ duties in relation to plans for provision of their adoption service. The wording parallels that in section 19 of the 1995 Act (*local authority plans for services for children*). Subsection (1) places a duty on local authorities to prepare and publish plans for the provision of the adoption service which they are required to provide under section 1(1).
29. Subsection (2) places a duty on local authorities to review the plans created under subsection (1) “from time to time” and to modify or replace completely the plans and publish them as necessary.
30. Subsection (3) places a duty on local authorities to consult a range of bodies and organisations in making or reviewing plans under subsection (1) or subsection (2). The bodies and organisations that should be consulted are the Health Board in the relevant local authority area, any voluntary organisations which may represent the interests of a person who is likely to use the adoption service, any voluntary organisations which may provide an adoption service and any other persons that may be prescribed by regulations made by Scottish Ministers.+
31. Subsection (4) allows a local authority to incorporate a plan that is to be published under subsection (1) into any plan published by the local authority in connection with services for children. Under subsection (5) it is not necessary to publish an adoption services plan separately where it is incorporated in this way.
32. By virtue of subsection (6) the duty to review and modify or replace plans and the right not to publish a separate plan under subsection (5) will apply to any modified or replacement plan as well as plans originally created under subsection (1).

## **Section 5 - Guidance**

33. This section relates to any guidance issued by the Scottish Ministers concerning the provision of an adoption service. Subsection (2) places a duty on local authorities providing an adoption service to have regard to any such guidance. Subsection (3) specifies what may be included in such guidance. It may include information on how a local authority should assess or re-assess a person’s need for adoption support services; how a local authority’s power to assess a person’s needs under section 9(1) should be exercised; how a local authority should decide the classes of person who may be eligible for an assessment of needs under section 9(1); and how responsibility for providing an adoption service should be transferred between local authorities.
34. By virtue of subsection (4) the Scottish Ministers may vary or revoke any such guidance.

***Section 6 - Assistance in carrying out functions under sections 1 and 4***

- 35. Subsection (1) allows a local authority to require assistance from an “appropriate person” in carrying out any function set out at section 1 or 4.
- 36. Subsection (2) sets out the circumstances in which an appropriate person may refuse to comply with a request made by a local authority under subsection (1). These include where it would not be reasonably practical to do so, where it would be incompatible with the person’s functions, statutory or not, and where the person’s functions (when the person is not a natural person) would be unduly prejudiced.
- 37. Subsection (3) defines an “appropriate person” as including another local authority, a Health Board and such other person as may be prescribed, by regulations made by Scottish Ministers, as an “appropriate person”.

***Section 7 - Meaning of “adoption service” in Regulation of Care (Scotland) Act 2001***

- 38. This section provides a new definition of “adoption service” in sections 2(11) and 2(12) of the Regulation of Care (Scotland) Act 2001 as a consequence of the provisions of the Act.

***Section 8 - Adoption agencies: regulations about carrying out of functions***

- 39. Subsection (1) gives the Scottish Ministers the power to make regulations relating to a registered adoption service carrying out its functions.
- 40. Subsection (2) gives the Scottish Ministers the power to make regulations relating to a local authority carrying out its functions of making or participating in arrangements for the adoption of children.
- 41. Subsection (3) sets out matters which regulations made under this section may, in particular, include being the circumstances in which a local authority proposing to make arrangements for the adoption of a child must apply for a permanence order which includes provision granting authority for the child to be adopted and the period within which such an application must be made.

***Section 9 - Assessment of needs for adoption support services***

- 42. This section relates to the assessment of needs for adoption support services. By virtue of subsection (1), a local authority must provide an assessment of needs for adoption support services when requested to do so by people listed in any of paragraphs (a) to (i) of section 1(3). These include the child, the child’s family and the child’s adoptive family. The local authority may provide such an assessment for a person listed at paragraph (j) of section 1(3), namely any other person affected by placing of a child for adoption, proposed placing or adoption itself.
- 43. Subsection (2) provides that where a local authority carries out an assessment under subsection (1), it must decide whether the provision of adoption support services is required.
- 44. Subsection (3) provides that an assessment carried out under this section must be done in such a manner as may be prescribed in regulations made by the Scottish Ministers.

***Section 10 - Provision of services***

- 45. Subsection (1) provides that on the request of a person mentioned in section 1(3) a local authority must provide adoption services of a type listed in section 1(4)(d) to that person, namely information about adoption. Subsection (2)(a) provides that on the request of a person mentioned in section 1(3)(a), (c) or (g) (children who may be adopted, parents and guardians of such children and persons who may adopt a child) a local authority

must provide adoption services of a type mentioned in section 1(4)(a), (b) or (c) to that person, namely arrangements for assessing children who may be adopted, arrangements for assessing prospective adopters and arrangements for placing children for adoption. Subsection (2)(b) allows a local authority also to provide adoption support services to such a person.

46. By virtue of subsection (3), services can be provided under subsection (2) whether or not an assessment of needs has been carried out. This will allow an authority to provide counselling at the same time as making the assessments or arrangements mentioned above without first undertaking an assessment of needs.
47. By virtue of subsection (4)(a), where a local authority has decided under section 9(2) that the provision of adoption support services is required following an assessment of needs carried out for a person listed in section 1(3)(a) to (i), the authority must provide the service to that person; subsection (4)(b) provides that where an assessment of needs reveals that a service is called for in respect of a person mentioned in section 1(3)(j) (any other person affected), the authority has discretion whether to provide the service to that person.

### ***Section 11 - Urgent provision***

48. While section 9 makes provision for assessment of needs for adoption support services of persons mentioned in section 1(3), section 11(1) allows a local authority that considers that such a person requires adoption support services as a matter of urgency to provide these services without first carrying out an assessment of the person's need for support.
49. Where support has been provided under this section without an assessment of needs, subsection (2) places a duty on a local authority to carry out such an assessment as soon as is practicable after the support has been provided. This does not apply where a service is provided without an assessment of needs under section 10(2)(b).

### ***Section 12 - Power to provide payment to person entitled to adoption support service***

50. This section relates to the payment of money in lieu of the provision of an adoption support service by a local authority. It applies where a local authority has an obligation to provide, or secure the provision of, an adoption support service, or has a power to do so and decides that it should provide such services.
51. Subsection (2) gives local authorities power to provide a payment to the person instead of providing specific services having had regard to certain matters set out in subsection (3).
52. The matters to which a local authority must have regard include the person's eligibility for assistance from another source and the availability of such assistance at the time when the service would have been provided by the local authority.
53. Under subsections (4) and (5), a local authority may make payment subject to such conditions (including conditions concerning repayment) as the authority considers reasonable, taking account of the person's eligibility for assistance from any other body.

### ***Section 13 -- Regulations***

54. This section gives the Scottish Ministers the power to make regulations relating to various aspects of the provision of an adoption service.
55. In subsection (1), paragraph (a) enables regulations to determine which local authority is responsible for the provision of an adoption service and the making of an assessment of needs.

- 56. Paragraph (b) enables regulations to determine when and under what circumstances a local authority's duty to provide an adoption service ends.
- 57. Paragraph (c) enables provision to be made about the circumstances in which a local authority can continue to provide an adoption service after the duty to provide such a service has ended.
- 58. Paragraph (d) enables regulations to specify the arrangements that may be made by a local authority when a person to whom it is supplying an adoption service moves outwith the authority's area.
- 59. Paragraph (e) enables regulations to specify with whom arrangements under paragraph (d) can be made.
- 60. Paragraph (f) enables regulations to be made concerning the assessment of needs for adoption support services of someone who has moved or intends to move from one local authority area to another or from outwith Scotland to Scotland.
- 61. Regulations made under this section can be exercised to make different provision for different adoption services.

## **Chapter 2**

### ***The Adoption Process***

#### ***Section 14 - Considerations applying to the exercise of powers***

- 62. This section places various duties on the court or adoption agency when coming to a decision in relation to the adoption of a child including a duty to ensure that the welfare of the child is the paramount consideration, and to ensure that an adoption order is granted only if there is no better alternative for the child.
- 63. By virtue of subsection (2), the court or adoption agency must consider all of the circumstances of the case before coming to a decision to place the child for adoption or to make an adoption order.
- 64. By virtue of subsection (3), when making a decision about whether or not to place a child for adoption or whether or not to make an adoption order, the court or adoption agency must have as its paramount consideration the best interests of the child throughout his or her life (including after childhood).
- 65. In addition to this overarching principle, under subsection (4) the court or adoption agency must, as far as is reasonably practicable, take into account a number of specific considerations. These are (a) the value of a stable family unit in the child's development; (b) the child's own ascertainable views regarding adoption (taking into account the age and maturity of the child); (c) the child's religious persuasion, racial origin and cultural and linguistic background; and (d) the likely effect on the child, throughout his or her life, of the making of the adoption order.
- 66. The requirements of paragraph (c) mean that a court or adoption agency must have regard to these factors when placing a child, but do not mean that a child cannot be placed with adopters of other religious persuasions, racial origins and cultural and linguistic backgrounds.
- 67. Subsection (5) places a duty on an adoption agency which is placing a child for adoption to have regard, so far as is reasonably practicable, to the views of the child's parents, guardians and other relatives. "Relative" is defined for the purposes of the Act in section 119(1).
- 68. In carrying out these duties an adoption agency has a further duty under subsection (6) to consider whether adoption is the best way to meet the interests of the child or whether there is a better alternative. If it considers that there is a better alternative it must not make arrangements for the adoption of the child (subsection (7)).

69. Subsection (8) provides that a child who is at least 12 years old will be presumed to be capable of expressing his or her views for the purposes of subsection (4)(b). This is without prejudice to the generality of that subsection and therefore allows the court or adoption agency to take into account the views of a child below that age.

***Section 15 - Child to live with adopters before adoption order made***

70. By virtue of subsections (1), (2) and (3), where a person applying for an adoption order is a parent, step-parent or relative of the child, or the child was placed with the applicant by an adoption agency, the adoption order cannot be made unless the child is at least 19 weeks old and that the child's home was with the applicants at all times during the 13 weeks immediately prior to the making of the adoption order.
71. Where the child was not so placed or neither of the applicants is a parent, step-parent or relative of the child, an adoption order cannot be made unless the child lived with the prospective adopters at all times during the 12 month period immediately preceding the making of the adoption order.
72. Subsection (5) applies to adoptions by way of Convention adoption orders (as defined by section 119) and to adoptions of children who are habitually resident outwith the British Islands, otherwise than by that type of order. In these cases the reference to the period of 13 weeks referred to above is read as a reference to a period of 6 months.

***Section 16 - Home visits***

73. By virtue of subsections (1) and (2), where a child has been placed with prospective adopters by an adoption agency, an adoption order cannot be made unless the court is satisfied that the adoption agency has been given sufficient opportunities to see the child with the prospective adopters in their home environment.
74. By virtue of subsections (3) and (4), where the child was not so placed, an adoption order cannot be made unless the court is satisfied that the local authority in whose area the prospective adopters have a home has been given sufficient opportunities to see the child with the prospective adopters in their home environment. Where the prospective adopters do not have a home in Scotland, any Scottish local authority must be given such opportunities.
75. In practice, the local authority to which such opportunity must be given at subsection (4) will normally be the local authority which has been notified of the prospective adopters' intention to adopt under section 18(2).

***Section 17 - Reports where child placed by agency***

76. By virtue of subsection (2) of this section, where an adoption application relates to a child who has been placed for adoption by an adoption agency, the agency must submit to the court a report concerning the suitability of the applicants and any other matters relevant to the operation of section 14 (considerations applying to the exercise of powers). In addition, the agency must assist the court in any way which the court directs.

***Section 18 - Notification to local authority of adoption application***

77. By virtue of this section, where a child was not placed for adoption by an adoption agency, an adoption order cannot be made unless the prospective adopters have given notice of their intention to apply for such an order at least 3 months before the date on which the order is made. Notice must be given to the local authority within whose area they have their home, or, where the applicants do not have a home in Scotland, to any local authority.



***Section 19 - Notice under section 18: local authority's duties***

- 78. Where, under section 18, a local authority receives notice of intention to apply for an adoption order, it must, by virtue of subsection (2), investigate the matter and submit a report of the investigation to the court.
- 79. Subsection (3) specifies the factors which the local authority must, in particular, investigate, which are, as far as is reasonably practicable, the suitability of the applicants and any other matters relevant to the operation of section 14; any contravention of section 75; and any failure to comply with section 76(2) of the Act.
- 80. By virtue of subsection (4), if a local authority receives a notice under section 18, and it is aware that the child is being looked after by another local authority, it must give a copy of the notice to that local authority within seven days of receipt.

***Section 20 - Restrictions on removal: child placed for adoption with consent***

- 81. Where a child has been placed for adoption by an adoption agency, with consent of the child's parents, subsection (2) provides that the parents cannot remove the child from the care of the prospective adopters without the leave of the adoption agency or the appropriate court.
- 82. Subsection (3) makes it an offence to remove a child in breach of subsection (2). The offence is punishable by imprisonment for a term not exceeding 3 months, a fine not exceeding level 5 on the standard scale, or both.

***Section 21 - Restrictions on removal: notice of intention to adopt given***

- 83. This section applies where, under section 18, prospective adopters give notice of intention to adopt and the child has lived with the prospective adopters for the five years immediately preceding the adoption application.
- 84. Subsections (2) and (3) provide that, between notice being given under section 18 and the occurrence of a "relevant act" specified at subsection (4), a child may not be removed from the care of the prospective adopters, unless the prospective adopters consent to the removal; a court with jurisdiction to make adoption orders grants leave for the child to be removed; the child is arrested; or the removal is authorised by virtue of any enactment.
- 85. Subsections (4) and (5) specify the "relevant act" as the making of an application for an adoption order where the application is made within 3 months of the date on which the local authority received notice under subsection (1). Where prospective adopters have not made an application for adoption within that 3 month period, the "relevant act" is the expiry of that 3 month period.
- 86. By virtue of subsection (6), where, during the 3 month period mentioned above or during the 28 day period immediately after the expiry of the 3 month period, prospective adopters give further notice of their intention to apply for an adoption order in respect of the same child, the prohibition on removing the child under subsection (2) does not apply.
- 87. Subsection (7) provides that it is an offence for a person to contravene the terms of this section. Such an offence is punishable by imprisonment for a period of up to 3 months or a fine not exceeding level 5 on the standard scale or both.

***Section 22 - Restrictions on removal: application for adoption order pending***

- 88. By virtue of subsections (1), (2) and (3), where an application for an adoption order has been made to the court, but the court has not yet made a determination, and where the child's home during the 5 year period preceding the adoption application has been with the prospective adopters, a child cannot be removed from the home of the prospective

adopters unless the prospective adopters agree to the removal; the court grants leave for removal; the child is arrested; or removal is authorised by an enactment. Subsection (4) makes it an offence to remove a child in breach of subsection (2). Such an offence is punishable by imprisonment for a term not exceeding 3 months, a fine not exceeding level 5, or both.

### ***Section 23 - Restrictions on removal of child looked after by local authority***

89. Subsection (2) applies where an application for an adoption order has been made but not yet determined or prospective adopters have given notice of intention to adopt and, in each case, the child's home has been with the prospective adopters for the previous 5 years, and the child was looked after by the local authority before he or she lived with the prospective adopters, and the child remains a looked after child.
90. By virtue of subsection (2), the local authority must not remove the child from the care of the prospective adopters, except where subsection (3) applies, namely, where the removal is made in accordance with section 25 or 26, an appropriate court grants leave for removal, or where the removal is authorised by virtue of Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995. "Appropriate court" is defined at section 118 of the Act.

### ***Section 24 - Return of child removed in breach of certain provisions***

91. By virtue of subsection (1), a person who has removed a child in breach of the provisions listed in subsection (4) can, on application by the person from whom the child was removed, be ordered by the court to return the child.
92. Under subsection (2), a court can order a person not to remove a child from another's home. This can be done when the court receives an application from a person who has reasonable grounds to believe that another person intends to remove a child in breach of the provisions listed in subsection (4).
93. The provisions set out in subsection (4) are sections 20, 21, 22 and 23 of the Act, sections 30 (general prohibitions on removal), 34 (placement orders: prohibition on removal), 35 (return of child in other cases) and 36 (restrictions on removal) of the Adoption and Children Act 2002 and Articles 28 (restriction on removal where adoption agreed or application made) and 29 (restrictions on removal where applicant has provided home for 5 years) of the [Adoption \(Northern Ireland\) Order 1987 \(S.I. 1987/2203\)](#).

### ***Section 25 - Return of child placed for adoption by adoption agency***

94. This section applies where a child has been placed with prospective adopters under arrangements made by an adoption agency or registered adoption society, but where no adoption order has been made.
95. By virtue of subsection (2), prospective adopters with whom a child has been placed can notify the adoption agency or society of their intention to cease caring for the child.
96. By virtue of subsection (3), the adoption agency or society can notify prospective adopters with whom a child has been placed of their intention to remove the child from their care. Where an application for an adoption order has been made, then, by virtue of subsection (4), an adoption agency or society can only do so if leave of the court has been given.
97. Under subsections (5) and (6), where notice is given under subsection (2) or (3) or where an application for an adoption order is refused or withdrawn, prospective adopters must, before the expiry of the "relevant period", return the child to the adoption agency or society or to a person nominated by the adoption agency or society.
98. Subsection (7) defines the "relevant period". Where notice is given by virtue of subsection (2) or (3), the relevant period is 7 days beginning with the day on which



notice was given. Where an application for an adoption order is refused or withdrawn, the relevant period is 7 days beginning with the day on which the application was refused or withdrawn. Where the court refuses the application for an adoption order it may, before the relevant period expires, make an order extending the period for the return of the child by a period not exceeding 6 weeks.

- 99. By virtue of subsection (8) it is an offence for a person to fail to return a child within the relevant period and such a person is liable to imprisonment for a period of up to three months or a fine not exceeding level 5 on the standard scale or both.
- 100. By virtue of subsection (9), where a court convicts a person under subsection (8), it may order that the child be returned to his or her parents or guardian the adoption agency or registered adoption society.

### ***Section 26 - Looked after children: adoption not proceeding***

- 101. This section applies where a child who is looked after by a local authority is living with prospective adopters, but has not been placed there by an adoption agency or a registered adoption society, and the prospective adopters have given notice of intention to adopt under section 18.
- 102. By virtue of subsection (2), the prospective adopters can notify the local authority that they intend to cease caring for the child.
- 103. By virtue of subsection (3), the local authority can notify the prospective adopters that it intends to remove the child from their care. Where an application for an adoption order has been made in relation to the child then, by virtue of subsection (5), the local authority can give such notice only if leave of the court has been given.
- 104. By virtue of subsection (4), where notice is given under subsection (2) or (3), the prospective adopters must deliver the child to the local authority or a nominated person within 7 days of giving such notice.
- 105. Under subsection (6) where an adoption order in relation to a child is refused or withdrawn, the child need only be delivered to the local authority if the local authority so requires and in which case the child must be delivered before the expiry of 7 days beginning with the date of the requirement.
- 106. By virtue of subsection (7), where the prospective adopters are awaiting the outcome of an adoption application, a local authority cannot require the child to be delivered other than under this section.
- 107. Subsection (8) provides that it is an offence for a person to contravene this section. The offence is punishable by imprisonment for a period of up to 3 months or a fine not exceeding level 5 on the standard scale or both.
- 108. By virtue of subsection (9), where a person is convicted of an offence under this section, the court may order that the child is delivered to his or her parent or guardian or to the local authority.

### ***Section 27 - Contravention of sections 30 to 36 of the 2002 Act***

- 109. By virtue of subsection (1), anyone who contravenes any of the sections of the Adoption and Children Act 2002 listed at subsection (2) is guilty of an offence and is liable to imprisonment for a term not exceeding 3 months, a fine not exceeding level 5 on the standard scale, or both.
- 110. The provisions listed at subsection (2) are sections 30(1), (2) and (3) (general prohibitions on removal), 32(2)(b) (recovery by parent etc. where child placed and consent withdrawn), 33(2) (recovery by parent etc. where child placed and placement order refused), 35(2) (return of child in other cases), 34(1) (placement orders: prohibition on removal), 36(1) and 36(5) (restrictions on removal). These prohibit the

removal of a child in specified circumstances or provide for an order for the return of a child who has been removed.

### **Section 28 - Adoption orders**

- 111. By virtue of subsection (1), an adoption order vests all parental responsibilities and parental rights in relation to the child in the adopter(s).
- 112. Before making an adoption order, in addition to the considerations which the court must take into account in terms of section 14 of the Act, subsection (2) requires that the court must be satisfied that it would be better for the child that the adoption order should be made than that it should not be made.
- 113. Subsection (3) provides that the court may attach such terms or conditions it sees fit when it makes an adoption order, although this power must be exercised in accordance with the requirements of section 14.
- 114. Adoption orders are generally to be made in respect of a “child”, which is defined in the Act to mean a person who has not attained the age of 18. However, subsection (4) allows an adoption order to be made in respect of a person who is 18 years or older if the adoption application was made when the person was under 18.
- 115. An adoption order may be made in respect of a child even if the child has already been adopted or is the subject of a permanence order (subsections (5) and (6)). This will allow a child to be “readopted” should the previous adoption break down.
- 116. Subsection (7) prohibits an adoption order being made in respect of a person who is or has been married or a civil partner.

### **Section 29 - Adoption by certain couples**

- 117. By virtue of subsection (1), “relevant couples” may make an application for adoption where both members of the couple are at least 21 years old, and neither applicant is a parent of the child to be adopted. Further, at least one of the conditions in subsection (2) must be met, namely that at least one member of the couple must be domiciled in the British Islands or that both members of the couple have been habitually resident in the British Islands for at least 1 year before the date of the adoption application.
- 118. A “relevant couple” is defined in subsection (3) and means a married couple, civil partners or a couple that is living together in an enduring family relationship, whether or not that relationship is heterosexual or homosexual. The phrase “enduring family relationship” is used to indicate two people who are in a relationship that is akin to a marriage or civil partnership. The length of a relationship or financial interdependency will be relevant factors in assessing the overall strength of a relationship and the suitability of a couple to adopt.
- 119. The definition of enduring family relationship does not apply to two people who do not have a relationship akin to a marriage or civil partnership, such as two platonic friends or two siblings who live together.
- 120. For the purposes of this section, subsection (4) defines a ‘parent’ to be a parent who has any parental responsibilities or parental rights in relation to the child.

### **Section 30 - Adoption by one person**

- 121. This section sets out the circumstances in which one person (as opposed to a couple) may adopt a child.
- 122. By virtue of subsection (1), that person must be aged 21 or over, and either domiciled in the British Islands (subsection (6)(a)) or have been habitually resident in the British Islands for at least one year before the date of the application for an adoption order (subsection (6)(b)).

123. In addition to these two conditions, such persons must fall within one of the following categories.
124. By virtue of subsection (2), the applicant must be a single person (i.e., a person who is unmarried, not a civil partner and not part of a couple living together in an enduring family relationship).
125. By virtue of subsection (3) a person may apply for an adoption order where they are a member of a “relevant” couple, if the other member of the couple is a parent of the child to be adopted and is aged 18 or over. That parent must also have parental responsibilities and parental rights in relation to the child to be adopted and meet same domicile or residence requirements as the applicant. This category therefore relates to step-parents, civil partners and cohabitants and allows them to make an application to adopt the child of their spouse, civil partner or person with whom they are living in an enduring family relationship.
126. By virtue of subsection (4) an adoption order may be granted on the application of one person if his or her spouse or civil partner, not being a parent of the child, cannot be found, is separated from the applicant on a basis that is likely to be permanent, or is incapable of making an application for adoption because of illness.
127. By virtue of subsection (5), one person may adopt where they are living in an enduring family relationship with someone who is incapable of applying to adopt because of illness. Again, the application may be made only if the applicant’s cohabitant is not the parent of the child to be adopted.
128. By virtue of subsection (7), where the application to adopt is made by a person who is the natural parent of the child to be adopted, an adoption order can only be made if the other parent is dead or cannot be found, or there is no other parent by virtue of section 28 of the Human Fertilisation and Embryology Act 1990 (meaning of “father”) (disregarding subsections (5A) to (5I) of that section), or there is another reason justifying the exclusion of the other parent.
129. For the purposes of this section, ‘parent’ has the same meaning as that given at section 29(4), namely a parent who has any parental responsibilities or parental rights in relation to the child.

### ***Section 31 - Parental etc. consent***

130. Before an adoption order can be made, the court must be satisfied that one of five conditions relating to consent is met.
131. The first condition is that each parent or guardian of the child has either consented to the making of the adoption order (subsection (2)(a)) or his or her consent should be dispensed with (subsection (2)(b)).
132. Subsection (3) sets out the grounds on which a parent or guardian’s consent can be dispensed with. These are that the parent or guardian is dead; that they cannot be found or are incapable of giving consent; that, either subsection (4) or (5) applies or, where neither of those subsections applies, the welfare of the child requires the consent to be dispensed with. Subsection (4) applies where the parent or guardian has parental responsibilities or parental rights in respect of the child (other than those mentioned in sections 1(1)(c) and 2(1)(c) of the Children (Scotland) Act 1995 (relating to contact only)), and, in the opinion of the court, is unable satisfactorily to discharge those responsibilities or exercise those rights and is likely to continue to be unable to do so. Subsection (5) applies where the parent or guardian does not have parental responsibilities or parental rights as the result of the making of a permanence order (not including one granting authority to adopt) and is unlikely to have parental responsibilities or parental rights vested in them.

133. The second condition is contained in subsection (7) and is that the child in respect of whom the adoption order is applied for is subject to a permanence order which grants authority for the child to be adopted. This means that the child's parents will already have consented to the making of an adoption order or their consent has been dispensed with at the time the permanence order was made.
134. The third condition, set out in subsection (8), applies where consent to adoption has been given by the child's parent or guardian under section 20 (advance consent to adoption) of the Adoption and Children Act 2002, that consent has not been withdrawn and the parent or guardian does not oppose the making of the adoption order.
135. The fourth condition, set out in subsection (9), applies where the child to be adopted has been placed with the prospective adopters by an adoption agency within the meaning of section 2(1) of the 2002 Act (basic definitions), either by virtue of section 19 (placing of children with parental consent) or section 21 (placement orders) of the 2002 Act. The child must have been at least 6 weeks old at the time the consent was given or, as the case may be, the order was made. In addition, no parent or guardian must oppose the making of the adoption order under consideration.
136. The fifth condition, set out in subsection (10), applies where a freeing order in respect of the child to be adopted is in force, having been made under legislation in Northern Ireland.
137. Subsection (11) provides that parental consent given by the mother to the making of an adoption order under subsection (2)(a) only has effect if the child is at least 6 weeks old when the consent is given.
138. By virtue of subsection (12) a parent or guardian can oppose an adoption under subsection (8) or (9) only with leave of the court. Under subsection (13), a court may grant such leave only if it is satisfied that there has been a change of circumstances since consent was originally given or the order under section 21 of the 2002 Act (placement orders) was made.
139. By virtue of subsection (14) it is not possible for a parent or guardian to withdraw consent given under section 19 (placing children with parental consent) or 20 (advance consent to adoption) of the 2002 Act, or under an order under section 21 of that Act, if that consent was given after an application for an adoption order has been made.
140. Subsection (15) defines 'parent', for the purposes of subsections (2) and (3), as meaning a parent who has any parental responsibilities or parental rights in relation to the child or a parent who, by virtue of a permanence order which does not include authority for the child to be adopted, has no such responsibilities or rights.

### ***Section 32 - Consent of child aged 12 or over***

141. By virtue of this section, an adoption order cannot be made in respect of a child who is aged 12 or over unless the child consents, except where the court is satisfied that the child is incapable of consenting. Only where the court is of the opinion that the child aged 12 or over is incapable of giving his or her consent can this be dispensed with. The views of children should be considered in accordance with section 14.

### ***Section 33 - Restrictions on making orders***

142. By virtue of subsection (1), a court may not hear an application for an adoption order in relation to a child where any application falling within subsection (3) has already been made by the same applicants and refused by any court.
143. The applications listed at subsection (3) are an adoption order within the meaning of the Act; an adoption order as defined section 46(1) of the Adoption and Children Act 2002 (adoption orders); an adoption order made, or having effect as if made, under Article 12

of the Adoption (Northern Ireland) Order 1987 (adoption orders); an order for adoption made in the Isle of Man; or an order for adoption made in any of the Channel Islands.

144. Subsection (1) does not apply where, in refusing the previous application, the court directed that this section should not apply (subsection (2)(a)). In addition, a court may hear an application where it appears that it is proper to do so because of a change in circumstances or for any other reason (subsection (2)(b)).

### ***Section 34 - Contravention of section 72 no bar to making order***

145. By virtue of this section, even where the applicants have made or accepted payments prohibited by section 72 of the Act in relation to the child to be adopted, a court can still make an adoption order in their favour.

### ***Section 35 - Effect of order on existing rights etc.***

146. By virtue of subsection (1), where an adoption order is made on the application of a member of a relevant couple under section 30(3) (a step-parent or equivalent adoption), the making of the order does not extinguish the parental responsibilities and parental rights that are vested in the other member of the couple. Neither does it extinguish any duty owed to the child by that other member in respect of paying or providing aliment in respect of any period after the making of the order, nor any duty to make payment arising out of parental responsibilities and parental rights in respect of this period.
147. Otherwise, by virtue of subsection (2), the making of an adoption order extinguishes any parental responsibilities and parental rights that vested in any person immediately before the making of the order and extinguishes any duties owed immediately before the making of the order to pay or provide aliment or make any payment arising out of parental responsibilities or parental rights relating to the child in relation to any period occurring after the making of the order.
148. However, under subsection (3), the making of an adoption order does not extinguish a duty deriving from a deed or agreement which constitutes a trust or which expressly provides that it is not extinguished by the making of an adoption order.
149. By virtue of subsection (5), the making of an adoption order also has no effect on parental responsibilities and parental rights in relation to the period prior to the making of the order.

### ***Section 36 - Revocation of supervision requirement***

150. Under this section, where the child is subject to a supervision requirement (see section 119 for the definition of this term) and the court is satisfied that compulsory measures of supervision (as defined in that section) would (by virtue of the making of the adoption order) no longer be necessary, the court must make an order providing that the supervision requirement ceases to have effect on the making of the adoption order.

### ***Section 37 - Information to be kept about adoptions***

151. By virtue of this section, the Scottish Ministers have the power to make regulations with regard to the information which an adoption agency must keep in relation to adoptions, and the form and manner in which such information must be kept.

### ***Section 38 - Disclosure of information kept under relevant enactment***

152. By virtue of this section, the Scottish Ministers have the power to make regulations in relation to disclosure by adoption agencies to adopted persons and others of information about adoptions held by adoption agencies by virtue of section 37 or any other enactment which imposes a requirement to keep records relating to adoption.



153. Subsection (2) provides that such regulations may include provision giving adoption agencies discretion as to whether or not to disclose information in certain circumstances; specifying conditions which are to apply to the disclosure of information; specifying circumstances in which information should not be disclosed to certain categories of adopted persons; and providing for the review of decisions of adoption agencies in connection with the disclosure of information and the conditions applicable to such disclosure.

### **Chapter 3**

#### ***Status of Adopted Children***

##### ***Section 39 - Meaning of “adoption” in Chapter 3***

154. Subsection (1) defines the term “adoption” for the purposes of Chapter 3 of the Act.
155. Subsection (2) provides that references to adoption in this Chapter do not include an adoption which took place before the Chapter came into force.
156. Subsection (3) provides that any reference in an enactment to an adopted person within the meaning of Chapter 3 also includes an adopted child within the meaning of Part IV of the Adoption (Scotland) Act 1978. Part IV deals with the status of adopted children under that Act and is the only part of the 1978 Act which is not repealed. This is to ensure that the status of children adopted under the provisions of the 1978 Act is unaffected by this Act.

##### ***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.

##### ***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.

#### ***Section 42 - Pensions***

- 164. The effect of this section is to provide that section 40 of the Act does not affect an adopted person's entitlement to a pension which is payable to, or for the benefit of, the person, at the time of the adoption and which is in payment at that time.

#### ***Section 43 - Insurance***

- 165. Under section 43, where a child is adopted and his or her natural parents had an insurance policy for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy are transferred to the adoptive parents. The adoptive parents are to be treated as the persons who took out the policy.

#### ***Section 44 - Succession and inter vivos deeds***

- 166. The effect of this section is to preserve the law relating to succession and to disposal of property by a person under a deed which takes effect while the person is still alive (as that law affects adopted persons). That law remains unaffected by section 40.

### ***Chapter 4***

#### ***Adoption Support Plans***

#### ***Section 45 - Adoption support plans***

- 167. This section applies when a local authority has carried out an assessment of needs for a person who is a member of a "relevant family" under section 9, and has decided that the provision of adoption support services is called for.
- 168. Subsection (2) places a duty on a local authority to prepare an adoption support plan for each member of the relevant family.
- 169. Subsection (3) outlines the information that must be included in an adoption support plan. Each plan must specify the needs of the individual to whom it relates; set out how those needs may be met by the provision of adoption support services; record details of any previous assessment of needs for that person made under section 9(1)(a); record the details of any assessment of needs made under section 12A(1) of the Social Work (Scotland) Act 1968 (duty of local authority to assess needs); record details of any care plan prepared under regulations made under section 17 of the 1995 Act (duty of local authority to children looked after by them); record the details of any adoption support services which were being provided before the adoption support plan was made or are to be provided when the adoption support plan is made; and it must specify any other matter which the local authority considers to be relevant to the provision of adoption support services. Where there is no information of the type required in paragraphs (a) to (i) of subsection (3) relating to a person, an adoption support plan must, under paragraph (j), record that fact.
- 170. Subsection (4) allows the local authority, subject to relevant consent from the relevant family, to prepare a single adoption support plan in respect of all members of the relevant family instead of an individual plan for each member. Subsection (5) applies

subsection (3) to a single adoption plan but with adjusted wording as appropriate to reflect that the single plan will relate to all members of the relevant family.

171. By virtue of subsection (6), where the local authority considers that a member of a relevant family who is aged 12 or over is incapable of giving the consent required by subsection (4), the authority is not required to obtain that person's consent to the preparation of a single plan.
172. Subsection (7) defines 'relevant family' for the purposes of this section. This includes children who have been placed for adoption, persons with whom a child has been placed for adoption, children who have been adopted and persons who have adopted a child. The definition also includes the children of people who have adopted a child or who have had a child placed for adoption with them, and any other person in the same household whom the persons have treated as one of their children.

### ***Section 46 - Duration***

173. Subsections (1) and (2) provide that an adoption support plan will cease to have effect upon the occurrence of the first of the following events: the preparation of a further plan in respect of the person or the members of the relevant family; or the date on which the adopted child reaches the age of 18. This does not affect any continuing right to adoption support itself.

### ***Section 47 - Family member's right to require review of plan***

174. Where an adoption support plan is in place and a member of the relevant family considers that the local authority is failing to comply with the terms of the adoption support plan, under subsection (2) the member can request that a local authority reviews the adoption support plan. Subsection (3) allows the authority, when reviewing a plan, to reassess the need of the member for adoption support services.
175. By virtue of subsection (4), the persons who are able to request a review under subsection (2) are the persons with whom the child has been placed for adoption, the persons who have adopted the child or a member of the relevant family who the local authority considers is capable of understanding the need for adoption support services. All members of the relevant family, including children, are able to request a review as long as they are able to understand the need for adoption support services. A request for review of an adoption support plan will normally be made by either adoptive parents or the adopted child. The adoptive parents can request a review on behalf of the adopted child if, in the opinion of the local authority, the child is not capable of understanding the need for adoption support services.
176. Subsection (5) imposes a duty on local authorities, following a review under subsection (2), to vary the adoption support plan to reflect any changes in the reassessed needs of a person and in the adoption support services that will be provided.
177. The effect of subsection (6) is that the section applies equally to members of a relevant family who have not had their needs for adoption support services assessed under section 9(1)(a). In this case, references to "reassessment" of a member's needs are to be read as references to an "assessment".

### ***Section 48 - Other cases where authority under duty to review plan***

178. Where an adoption support plan is in force subsection (2) places a duty on a local authority to review the plan "from time to time" and when it becomes aware of a change in circumstances of a member of a family to which such a plan relates.
179. When reviewing the adoption support plan under subsection (2), subsection (3) allows a local authority to reassess the need for adoption support services of any member of the adoptive family to which the plan relates.

180. Subsection (4) places a duty on a local authority to vary an adoption support plan to reflect the changes in the reassessed needs of a relevant person under subsection (3) and changes to the adoption support services provided by the local authority.
181. By virtue of subsection (5) “relevant member” has the same meaning as in section 47(6). As in section 47, references to a reassessment of needs include an assessment of needs if such an assessment has not been carried out in respect of the relevant member.

#### ***Section 49 - Reassessment of needs for adoption support services***

182. Where an adoption support plan is in force, subsection (2) provides that any member of a relevant family aged 12 or over may request that a local authority carry out a reassessment of that person’s need for adoption support services.
183. Subsection (3) places a duty on local authorities, following a reassessment, to decide whether or not there is a need for adoption support services.
184. Subsection (4) requires a local authority to provide adoption support services where they consider there is a need.
185. Subsection (5) places a duty on a local authority which is providing adoption support services by virtue of subsection (4) to vary the adoption support plan to reflect any changes in the support that will be provided.
186. Other than the persons with whom a child has been placed for adoption or who have adopted a child, subsection (6) allows a member of a relevant family to request a reassessment of their need for adoption support services only if they are capable of understanding the need for such services. This ensures that anyone, including a child, is able to request a reassessment, but only if the person is capable of understanding the need for adoption support services. Persons with whom a child has been placed or who have adopted a child are unaffected by this provision and have an absolute right to request a reassessment of needs.
187. Subsection (7) provides that where a local authority is making a reassessment of needs it should do so in such a manner and having regard to such matters as are prescribed by regulations made by the Scottish Ministers. Subsection (8) makes the same provision as subsection (5) of section 48 in relation to the meaning of “relevant member” and “reassessment of needs”.

#### ***Section 50 - Implementation of plans: directions***

188. This section allows the Scottish Ministers to give directions of a general or specific nature to a local authority with regard to the implementation of adoption support plans. Such directions may not require an authority to provide, continue to provide, or withhold provision of a particular adoption support service.
189. By virtue of subsection (3) the Scottish Ministers may vary or revoke any such direction made under subsection (1).

#### ***(a) Section 51 - Guidance***

190. This section places a duty on local authorities to have regard to any guidance issued by the Scottish Ministers (and which may be varied or revoked by the Scottish Ministers) when preparing or reviewing adoption support plans.

#### ***Section 52 - Regulations about reviews of adoption support plans***

191. This section gives the Scottish Ministers power to make regulations specifying the way in which reviews of adoption support plans are to be carried out.

#### ***Chapter 5***

## **Registration**

### **Section 53 - Adopted Children Register and index**

192. This section applies to the registration of adoptions by the Registrar General for Scotland (“the Registrar”).
193. By virtue of subsection (1), the Registrar must continue to maintain the Adopted Children Register and an index of the Adopted Children Register.
194. By virtue of subsection (2), entries in the Adopted Children Register must only be made as directed by adoption orders or as required under schedule 1 to the Act.
195. Under subsection (3) the provisions of the Births, Deaths and Marriages (Scotland) Act 1965 (“the 1965 Act”) concerning the correction of errors in entries in the register of births also apply to entries in the Adopted Children Register.

### **Section 54 - Searches and extracts**

196. Subsection (1) applies certain terms, conditions and regulations made under the 1965 Act in respect of searches and the supply of extracts of entries to searches in the index to the Adopted Children Register and supplies of extracts of entries in that Register. Those terms, conditions and regulations concern the payment of fees, and the form and authentication of documents, in respect of searches in indexes which the Registrar General is obliged to keep under the 1965 Act and the supply of extracts of entries in the registers of births, deaths and marriages.
197. By virtue of subsection (2), where a person requests a search to be carried out in accordance with the terms, conditions and regulations applied by subsection (1), the Registrar must, if the General Register Office is open, search (or permit the person to search) the index to the Adopted Children Register and issue to the person an extract of an entry in the Register.

### **Section 55 - Connections between the register and birth records**

198. By virtue of subsection (1), the Registrar General must ensure that there is a traceable connection between any entry in the register of births which has been marked ‘Adopted’ and any corresponding entry in the Adopted Children Register. Subsections (2) and (3) provide that any information which the Registrar General keeps for the purpose of subsection (1) is not open to the public and can only be disclosed in accordance with subsection (4).
199. Subsection (4) provides that such information can only be disclosed if it is disclosed by virtue of an order of the Court of Session or a sheriff, or to an adopted person aged 16 or over to whom the information relates or to a local authority, Board or adoption society which is providing counselling to an adopted person to whom the information relates.
200. By virtue of subsection (5), where such information is disclosed to an adopted person by virtue of subsection (4), the Registrar General must inform the person that counselling services are available. If the adopted person is in Scotland, counselling is available from any local authority in Scotland. If the adopted person is in England and Wales, counselling is available from any local authority in England and Wales. If the adopted person is in Northern Ireland, counselling is available from any Health and Social Services Board in Northern Ireland. If the adopted person is in the United Kingdom and the adoption was arranged by a registered adoption service, counselling is available from that service. If the person is in the United Kingdom and the adoption was arranged by a registered adoption society in England and Wales (as defined in section 2(2) (basic definitions) of the 2002 Act), counselling is available from that society. If the person is in the United Kingdom and the adoption was arranged by an adoption society registered under article 4 of the Adoption (Northern Ireland) Order 1987 (registration of adoption societies), counselling is available from that society.

201. By virtue of subsection (6), when the Registrar General discloses information by virtue of subsection (4) to an adopted person who is in Scotland or when such a person applies for information under Schedule 2 to the 2002 Act (disclosure of birth records by Registrar General) or Article 54 of the Adoption (Northern Ireland) Order 1987 (disclosure of birth records of adopted children) any organisation listed at subsection (7) must provide counselling for the person if requested to do so. These organisations are any local authority in Scotland and any registered adoption service or adoption society mentioned in subsection (5)(d)(ii) or (iii) in so far as that organisation is, by virtue of section 76(2) of the Act, acting as an adoption society in Scotland.

### ***Section 56 - Admissibility of extracts as evidence***

202. By virtue of subsection (1) an extract of an entry in the Adopted Children Register, issued by virtue of 54(2)(b) of the Act is, for the purpose of any court proceedings, sufficient evidence of the adoption to which it relates.
203. By virtue of subsection (2), an extract of an entry in the Adopted Children Register, issued by virtue of section 54(2)(b), which shows the date of birth of the adopted person or the country of birth of the adopted person is sufficient evidence of that date or country.

### ***Section 57 - Interpretation of Chapter***

204. “Registrar General” is defined for the purposes of this Chapter to mean the Registrar General of Births, Deaths and Marriages for Scotland. This section specifies that any register, index or record maintained under section 53 or 55 of, or schedule 1 to, the Act may be maintained in any form that the Registrar General considers appropriate.

## ***Chapter 6***

### ***Adoptions With a Foreign Element***

### ***Section 58 - Restriction on bringing children into the United Kingdom***

205. The provisions of this section apply where a person who is habitually resident in the British Islands (“British resident”) either brings, or causes another to bring, a child habitually resident outwith the British Islands into the United Kingdom for the purposes of adoption; or, brings, or causes another to bring, a child adopted by the British resident under an external adoption effected within a period of 12 months from that adoption.
206. Subsection (2) extends the reference to adoption by the British resident to include the British resident and another person. Subsection (3) excludes this section from applying if the child is intended to be adopted under a Convention adoption order. “Convention adoption order” is defined at section 119(1) of the Act and means an adoption made under the law of a country that has acceded to or ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993.
207. Subsection (4) defines an external adoption as an adoption, other than a Convention adoption, effected under the law of any country or territory outside of the British Islands.
208. Subsection (5) allows regulations to be made which require a person to apply to an adoption agency for an assessment of his or her suitability to adopt and provide the agency with any information it may require for the purpose of the assessment if he or she intends to bring, or cause another to bring, a child into the United Kingdom under the circumstances specified in this section.
209. Subsection (6) allows regulations to prescribe the conditions which must be met in respect of a child brought into the United Kingdom under the circumstances specified in this section.



- 210. Subsection (7) allows regulations to provide for any provision in Chapter 2 to apply with modifications, or not to apply, to a child brought into the United Kingdom for adoption purposes.
- 211. Subsection (8) allows the Scottish Ministers to make regulations exempting adoptions from the application of this section where the prospective adopter is either a relative or guardian, or a step-parent of the child and any prescribed conditions are met.
- 212. Subsection (9) specifies the parliamentary procedure which applies on the first exercise of the power to make a statutory instrument containing regulations under subsection (8). The instrument will be subject to draft affirmative procedure when first made. Subsequent use of the power will be subject to negative resolution procedure.

### ***Section 59 - Preliminary order where child to be adopted abroad***

- 213. By virtue of subsection (1), on receiving an application from prospective adopters who intend to adopt a child under the law of a country or territory outwith the British Islands, a court may make an order vesting parental responsibilities and parental rights in relation to the child in those prospective adopters.
- 214. By virtue of subsection (2), if the prospective adopters meet the domicile or habitual residence requirements for an adoption order in Scotland, an order cannot be made under this section.
- 215. Under subsection (3), no order under this section may be made unless any requirements prescribed by the Scottish Ministers are satisfied.
- 216. Under subsection (4), an application for an order under this section cannot be made unless the child has lived with the prospective adopters for the whole of the 10 week period immediately preceding the application.
- 217. Subsection (5) provides that section 35 of the Act (effect of order on existing rights etc.) has effect in relation to an order under this section as it does in relation to adoption orders.
- 218. Subsection (6) gives the Scottish Ministers the power to make regulations by which any provision of this Act relating to adoption orders relate to orders under this section.

### ***Section 60 - Restriction on removal of children for adoption outwith Great Britain***

- 219. Subsection (1) makes it an offence for any person to take or send a protected child out of Great Britain to any place outwith the British Islands with a view to the adoption of that child. 'Protected child' is defined at subsection (9) as a child who is habitually resident in the United Kingdom or a Commonwealth citizen.
- 220. Subsection (2) makes it an offence for any person to assist in the transferring of care of a protected child to another person, knowing that the other person intends to take or send the child out of Great Britain which would be an offence under subsection (1). Subsection (4) then specifies the activities which would be deemed to constitute an offence under subsection (2), being facilitating the placing of the child or initiating or taking part in negotiations for such placing or in relation to an agreement to transfer the care of the child.
- 221. Subsection (3) outlines the exemptions to an offence committed under subsection (1). It is an offence to remove a protected child from the British Islands with a view to the adoption of that child unless an order has been made under section 59 of the Act, section 84 of the 2002 Act (giving parental responsibility prior to adoption abroad), or Article 57 of the Adoption (Northern Ireland) Order 1987 (adoption by persons domiciled outside Northern Ireland).
- 222. Subsection (5) makes special provision for adoptions with a foreign element where the prospective adopters are parents, relatives or guardians or step-parents of the child. The



Scottish Ministers may by regulations modify the offence provisions at subsections (1) and (2) and the exceptions at subsection (3), or declare that they do not apply in relation to such persons if any conditions set out in the regulations are met.

- 223. Subsection (6) specifies the parliamentary procedure which applies to any regulations made under this provision. The first use of the power is subject to affirmative procedure. Thereafter such regulations will be subject to negative procedure.
- 224. Subsection (7) makes provision for reports by, or depositions made before, a British consular officer to be sufficient evidence in any proceedings under this section.
- 225. Subsection (8) prescribes the penalty for an offence under this section as a maximum of 3 months imprisonment, a fine not exceeding level 5 on the standard scale or both.

### ***Section 61 - Regulations under section 58: offences***

- 226. Subsection (1) makes it an offence for any person to bring, or cause another to bring, a child into the United Kingdom in circumstances where section 58 of the Act applies if the person has not applied to an adoption agency to have his or her suitability assessed or has failed to provide the agency with any information it may require all in terms of section 58(5) or if the person has not met any condition prescribed by regulations made under subsection (6) of that section.
- 227. Subsection (2) specifies the maximum penalty applicable to a person who has committed an offence under subsection (1). On summary conviction this is 6 months imprisonment or a fine up to the statutory maximum or both and on conviction on indictment imprisonment for a term not exceeding 12 months or a fine or both.

### ***Section 62 - Declaration of special restrictions on adoptions from abroad***

- 228. This section applies where the Scottish Ministers believe that it would be contrary to public policy to continue bringing children into the United Kingdom, in the cases outlined in subsection (2), from a country or territory outside the British Islands (the “relevant country”) due to practices taking place in that country or territory. Subsection (2) specifies two cases under which a child should not be brought into the country where this section would apply. The first is where a British resident wishes to bring into the United Kingdom for the purpose of adoption a child who is not a British resident and there have been, or would have to be, proceedings or dealings with authorities or agencies in the relevant country concerning the proposed adoption. The second case is where within the last 12 months a British resident has adopted a child in a relevant country and wishes to bring that child into the United Kingdom.
- 229. Subsection (3) allows the Scottish Ministers to declare by order that special restrictions are to apply for the time being to any relevant country in relation to the bringing in of children in the cases mentioned in subsection (2). Scottish Ministers will be able to apply restrictions to the bringing of children into the United Kingdom from outwith the British Islands who are adopted under the law of that country, or are brought into the United Kingdom for the purposes of adoption.
- 230. The Scottish Ministers must publish the reasons for making the declaration and a list of the restricted countries. Subsections (5) and (6) require the list to be kept up to date and for it to be published in such a way as the Scottish Ministers consider appropriate for bringing it, and the reasons for the declaration, to the attention of adoption agencies and the public.

### ***Section 63 - Review***

- 231. Subsection (1) states that the Scottish Ministers must review whether a country should continue to be restricted. Under subsection (2), where the Scottish Ministers deem that a country should no longer be restricted they must, by order, revoke the order containing the declaration made under section 62(3).

### ***Section 64 - The special restrictions***

232. This section makes provision for the special restrictions mentioned in section 62(3) of the Act. These restrictions are that the Scottish Ministers should take no further action in connection with bringing a child from outwith the British Islands into the United Kingdom who was adopted under the law of the relevant country, or is to be brought into the United Kingdom for the purposes of adoption.
233. Subsection (2), however, allows for action to be taken by the Scottish Ministers if the prospective adopter satisfies them that they should take this action despite the special restrictions.
234. Subsection (3) allows the Scottish Ministers to make regulations that provide for the procedure to be followed to determine whether further steps should be taken despite the special restrictions, and for matters which should be taken into account when making such a determination.

### ***Section 65 - Imposition of extra conditions in certain cases***

235. Subsection (1)(a) allows regulations to be made by Scottish Minister to set out additional steps agreed between the United Kingdom and a restricted country that the Scottish Ministers normally take in connection with bringing a child from the restricted country into the United Kingdom, and are not otherwise provided for by any enactment, to be specified in the restricted list in relation to that country. Subsection (1)(b) states that, where a step has been specified under subsection (1)(a), one or more conditions set out in the regulations must to be met in connection with a British resident bringing a child from the relevant restricted country into the United Kingdom in either of the cases specified in section 62(2).
236. Subsection (2) clarifies that such conditions are in addition to any conditions provided for by section 58 of the Act or any other enactment.
237. Subsection (3) makes it an offence for any person to bring, or cause to bring, a child into the United Kingdom for the purposes of adoption if they have not met any condition which they are required to meet in terms of regulations made under subsection (1)(b). Subsection (4) states that, if the step specified in the regulations had already been taken before the publication of the restricted list, no offence is committed in terms of subsection (3).
238. Subsection (5) prescribes the penalties for an offence made under subsection (3) being, on summary conviction a maximum of 6 months imprisonment or a fine up to the statutory maximum or both and on conviction on indictment imprisonment for a term not exceeding 12 months or a fine or both.

### ***Section 66 - Power to charge***

239. This section applies to adoptions referred to in section 58 of the Act or to which regulations made under section 1 of the Adoption (Intercountry Aspects) Act 1999 (regulations giving effect to Convention) apply. This will apply to any overseas adoption or any Convention adoption.
240. Subsection (2) allows the Scottish Ministers to charge a fee to adopters for services provided by Ministers in relation to adoption. Subsection (3) allows the Scottish Ministers to set the level of this fee, or waive the fee, as they see fit. However, subsection (4) provides that the income for these fees must not exceed the total cost of providing the services during any one financial year.
241. Subsection (5) defines “financial year” as the period of 12 months ending with 31st March.

**Section 67 - Meaning of “overseas adoption”**

- 242. Subsection (1) defines “overseas adoption” as an adoption as described in regulations made by the Scottish Ministers where the description is that of an adoption effected under the law of any country or territory outwith the British Islands (namely outwith the United Kingdom, Channel Islands and Isle of Man), but that is not a Convention adoption.
- 243. Subsection (2) allows for regulations to specify requirements that should be met by an adoption for it to be an overseas adoption after commencement of the regulations.
- 244. Subsection (3) restricts the Scottish Ministers’ power to make regulations under subsection (1) while regulations under subsection (2) are in force. The power must be exercised to ensure that adoptions effected after the coming into force of regulations under subsection (2) are not overseas adoptions if they are unlikely, within a reasonable time, to comply with the requirements in those regulations.
- 245. Subsection (4) provides that any regulations made under subsection (1) may indicate how evidence of overseas adoptions may be given.

**Section 68 - Annulment and recognition**

- 246. By virtue of subsection (1), the Court of Session can, on an application under this subsection, annul a Convention adoption or a Convention adoption order on the ground that the adoption or order is contrary to public policy.
- 247. By virtue of subsection (2), the Court of Session can, on an application under this subsection, order that an overseas adoption or a determination (defined as a “relevant determination” in terms of section 70 of the Act) is to cease to be valid in Great Britain on the ground that the adoption or determination is contrary to public policy or that the authority which authorised the adoption or made the determination was not competent to do so. The Court of Session may also decide the extent to which a determination has been affected by a subsequent determination.
- 248. By virtue of subsection (3), the Court of Session may, in proceedings in that court, decide that an overseas adoption or determination is for the purposes of those proceedings to be treated as invalid in Great Britain on the grounds that the adoption or determination is contrary to public policy or the authority which authorised the adoption or made the determination was incompetent.
- 249. By virtue of subsection (4), an order or decision by the High Court on an application under section 89(2) of the Adoption and Children Act 2002 (annulment etc. of overseas or Hague Convention adoptions) is to be recognised and have effect as if it were an order or decision of the Court of Session on an application under subsection (2).
- 250. By virtue of subsection (5), the validity of a Convention adoption, a Convention adoption order, an overseas adoption or a determination may not be called into question in any proceedings in any court in Scotland, except by virtue of this section.

**Section 69 - Section 68: supplementary provision**

- 251. By virtue of this subsection, any application for an order under section 68 or a decision made under subsection (2)(b) of that section is to be made as prescribed by regulations made by the Scottish Ministers and within such a period as prescribed.
- 252. By virtue of subsection (2), no application is to be made under section 68 of the Act unless immediately before the application is made the person adopted was habitually resident in Scotland or the persons on whose application the adoption order was made were habitually resident in Scotland.
- 253. By virtue of subsection (3), in deciding in pursuance of section 68 whether or not an authority as mentioned in section 70 of the Act was competent to hear a particular

case, a court is to be bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to hear the case.

### ***Section 70 - Effect of determinations and orders made outwith Scotland***

254. Subsection (2) provides that where an authority makes a decision pursuant to the exercise of a power of the type mentioned in paragraph (a) or (b) of subsection (1), the decision has effect in Scotland as it has in the country or relevant territory in which it was made.
255. This only applies if the authority is:
- that of a Convention country (other than the United Kingdom) which has exercised a legal power to make decisions (specified in subsection (1)(a)) in relation to Convention adoptions or Convention adoption orders, or
- that of any of the Channel Islands or Isle of Man or any British overseas territory within the meaning of the British Nationality Act 1981 which has exercised a legal power to make decisions (specified in subsection (1)(b)) in relation to Convention adoptions, Convention adoption orders or adoptions effected in that territory. (Subsection (1)(b) as read with subsection (3))
256. Subsection (4) provides that section 35 of the Act applies in relation to an order under Article 17 or Article 18 of the Northern Ireland Order as if it were an adoption order.
257. By virtue of subsection (5), sections 35(2) and (3) and 43 of the Act apply in relation to a child who is the subject of an order which is similar to an order under section 59 of the Act and is made (whether before or after the Act is enacted and brought into force) in England or Wales, Northern Ireland, the Isle of Man or any of the Channel Islands.

## ***Chapter 7***

### ***Miscellaneous***

### ***Section 71 - Adoption allowances schemes***

258. This section gives the Scottish Ministers the power to make regulations concerning the preparation of a scheme for the payment of allowances by a local authority or registered adoption service to a person who has adopted, or intends to adopt a child, through an adoption agency.
259. Subsection (1) provides that a local authority must, within such period as the Scottish Ministers direct, prepare an adoption allowances scheme. A registered adoption agency may prepare such a scheme.
260. Subsection (2) defines an adoption allowances scheme as a scheme for the payment by an agency, whether a local authority or registered adoption service, of allowances to any person who has adopted or intends to adopt a child where arrangements are made, or to be made, by the agency.
261. Subsection (3) enables the Scottish Ministers to make regulations in relation to adoption allowance schemes.
262. Subsection (4) sets out what such regulations may particularly include: the procedure to be followed to decide whether or not someone should be paid an adoption allowance; the circumstances in which an allowance can be paid; factors to be taken into account in deciding how much allowance should be paid; the procedure for review, variation and termination of any such allowance; the information about allowances that should be supplied to potential adopters; and the procedure to be followed in drawing up, making alterations to or revoking and replacing the scheme.

***Section 72 - Prohibition of certain payments***

263. Any person who makes any payment in relation to the adoption of a child, the giving of consent required in connection with the adoption of a child, the transfer of the care of a child with a view to his or her adoption, or the making of any arrangements for the adoption of that child commits an offence. By virtue of subsection (2), this section also applies to anyone who agrees or offers to make such a payment, receives or agrees to receive any such payment or attempts to obtain such a payment.
264. By virtue of subsection (3) a person who commits an offence under this section is liable to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or both.
265. By virtue of subsection (4), where a person has committed an offence under this provision the court can order that the child be removed to a place of safety (within the meaning of section 93(1) of the 1995 Act) until the child can be returned to his or her parent or guardian, or other arrangements can be made for the child.
266. By virtue of subsection (5), references to “payment” in this section include reward.

***Section 73 - Excepted payments***

267. This section relates to payments made in connection with adoptions which are not prohibited under section 72.
268. By virtue of paragraph (a) of subsection (2), a payment is excepted if it is made to an adoption agency by a parent or guardian of the child or by a person who adopts or proposes to adopt the child, in respect of expenses reasonably incurred by the agency in connection with the adoption or proposed adoption of the child. A payment is excepted by paragraph (b) if it is made in relation to legal or medical expenses incurred or to be incurred by any person in connection with an application which the person makes or intends to make for an adoption order or a preliminary order under section 59. Under paragraph (c), a payment is excepted if it is authorised by the court to which the adoption application was made. By virtue of paragraph (d), a payment is excepted if it is made by one adoption agency to another in consideration of placing the child for adoption. Paragraph (e) provides that a payment is excepted if it is made by an adoption agency to a voluntary organisation as a fee for the services of the organisation putting the adoption agency in touch with another agency.

***Section 74 - Disclosure of medical information about parents of child***

269. Subsection (1) gives the Scottish Ministers power to make regulations in relation to the disclosure of information about the health of the natural parents of a child who will be, may be, or has been adopted.
270. Any such regulations must ensure that a person to whom such information is disclosed is subject to a duty of confidentiality in respect of this information (subsection (2)).
271. However, by virtue of subsection (3), information may be disclosed to the child and to persons who are to, or may, adopt, or have already adopted the child.
272. Subsection (4) lists matters which any regulations made by virtue of subsection (1) may cover. These are: the types of persons by whom and to whom such information is to be disclosed; the circumstances in which this information is to be disclosed; the type of information which is or is not to be disclosed; the circumstances in which consent to the disclosure of such information is not required; and the processing of the information.



***Section 75 - Restriction on arranging adoptions and placing children***

273. By virtue of subsection (1), and subject to subsection (2), it is an offence for a person other than an adoption agency to make arrangements for the adoption of a child or to place a child for adoption.
274. Subsection (2) provides, however, that no offence will be committed if the prospective adopters or the person with whom the child is placed is a parent of the child, any other relative of the child or, where a parent of the child is a member of a relevant couple, the other member of the couple. “Relevant couple” has, by virtue of section 119(3), the meaning given in section 29(3).
275. Subsection (3) provides that it is an offence for a person to receive a child in contravention of subsection (1) knowing that the child has been placed for the purpose of adoption.
276. In terms of subsection (4), it is an offence for a person to manage or control a body which is not a registered adoption service or a local authority and the purpose of which is or includes making arrangements for the adoption of children.
277. Under subsection (5), any person who commits an offence under this section is punishable by imprisonment for a period of up to 3 months or a fine not exceeding level 5 on the standard scale or both.
278. By virtue of subsection (6), in proceedings under subsection (4), things done or words written, spoken or published by a person managing a body making arrangements for the adoption of children is sufficient evidence of the purpose of that body. By virtue of subsection (7), it does not matter if the acts listed in subsection (6) are not carried out in the presence of a party to the proceedings.

***Section 76 - Adoption societies which are not registered adoption services***

279. Under subsections (1) and (2), an adoption society which is registered in England and Wales or Northern Ireland, but not in Scotland, may not operate in Scotland unless it considers it necessary to do so in the interests of a person mentioned in section 3(1) of the Adoption and Children Act 2002 (“the 2002 Act”) (maintenance of adoption service) or Article 3 of the Adoption (Northern Ireland) Order 1987 (the adoption service).

***Section 77 - Effect of certain orders made in England and Wales***

280. Under section 77, an adoption order or placement order (including the variation or revocation of a placement order) made in England and Wales has the same effect in Scotland, with the exception that any reference made in the 2002 Act to the parental responsibility for the child is to be taken as a reference to the parental responsibilities and parental rights in relation to the child.

***Section 78 - Effect of placing for adoption etc. under 2002 Act***

281. **Section 78** provides that if a child is placed for adoption, or an adoption agency is authorised to place a child for adoption, with parental consent under the 2002 Act, the relevant provisions concerning parental responsibility and the further consequences of placement also have effect in Scotland with the exception that the appropriate terminology used in Scottish legislation is substituted. With regard to parental responsibility any reference to the parental responsibility for the child is to be read as a reference to the parental responsibilities and parental rights in relation to the child, and with regard to the further consequences of placement the reference to the court is to be read as a reference to the appropriate court.



### **Section 79 - Further consequences of placement and placement orders**

282. Under section 79, if a child is placed for adoption, or an adoption agency is authorised to place a child for adoption, with parental consent under the 2002 Act, no residence order under section 11(2)(c) of the 1995 Act (court orders relating to parental responsibilities etc) may be made in respect of the child.
283. Subsection (3) specifies that if a placement order is made for a child under the 2002 Act, any residence order, contact order, specific issue order or interdict in relation to parental responsibilities made under the 1995 Act ceases to have effect. Subsection (4) specifies that where a placement order is in force, none of the previously mentioned orders under the 1995 Act may be made in respect of a child and additionally, a child assessment order may not be made.

## **Part 2**

### **Permanence Orders**

284. A permanence order is a new type of court order which will regulate the exercise of parental responsibilities and parental rights in respect of children who cannot reside with their parents but where contact or shared exercise of parental responsibilities and parental rights is or may be appropriate. A permanence order may remove some or all parental responsibilities and parental rights and grant them to other persons specified in the order.

### **Section 80 - Permanence orders**

285. Under subsection (1), on the application by a local authority a court can make a permanence order in respect of a child. Only a local authority can apply for a permanence order.
286. Subsection (2) defines a permanence order by reference to the contents of such an order. All permanence orders will contain the “mandatory provision” set out at section 81. Additionally, the order may contain such of the “ancillary provisions” listed at section 82 as the court thinks fit. Such an order may also grant authority for the child to be adopted, but only where the conditions in section 83 are met.
287. Subsection (3) provides that in making a permanence order, the court must ensure that each parental responsibility and right in respect of the child vests in a person.

### **Section 81 - Permanence orders: mandatory provision**

288. Section 81 specifies the mandatory provision. The mandatory provision will vest in the applicant local authority for the appropriate period (defined by subsection (2)), the following parental responsibilities and parental rights:

the responsibility to provide, in a manner appropriate to the stage of development of the child, guidance to the child (as set out at section 1(1)(b)(ii) of the Children (Scotland) Act 1995) (subsection (1)(a)); and

the right (as set out at section 2(1)(a) of the 1995 Act) to regulate the child’s residence (subsection (1)(b)).

289. These will be the core elements of the permanence order: all permanence orders will confer these parental responsibilities and parental rights upon the local authority in whose favour the permanence order is made.
290. Subsection (2) defines the ‘appropriate period’ for which the permanence order will last. For the responsibility set out at subsection (1)(a) (provision of guidance) the appropriate period begins with the making of the permanence order and ends on the child’s 18<sup>th</sup> birthday. For the right set out in subsection (1)(b) (to regulate residence), the appropriate

period begins with the making of the permanence order and ends on the child's 16<sup>th</sup> birthday.

### **Section 82 - Permanence orders: ancillary provisions**

291. Section 82(1) sets out the ancillary provisions which, in addition to the core responsibilities and rights provided by the mandatory provision, section 80(2)(b) allows the court to vest in a person. Under paragraph (a) the court may vest in the applicant local authority for the appropriate period such of the parental responsibilities listed in section 1(1)(a), (b)(i) and (d) of the Children (Scotland) Act 1995 (to promote and safeguard the child's health, development and welfare; to provide direction to the child; and to act as the child's legal representative) and such of the parental rights listed in section 2(1)(b) and (d) of that Act (to control, direct or guide the child; to act as the child's legal representative) as the court considers appropriate.
292. Under paragraph (b) of section 82(1) the court may also vest in a person other than the applicant local authority, for the appropriate period, such of the parental responsibilities listed in section 1(1) of the 1995 Act and such of the parental rights listed in section 2(1) (b) to (d) of the 1995 Act in relation to the child as it considers appropriate.
293. Under section 82(1)(c) the ancillary provisions also allow the court, as it sees fit, to extinguish parental responsibilities which, immediately before the making of the permanence order, vested in a parent or guardian of the child and which vest in the local authority (by virtue of section 81(1)(a) or paragraph (a)(i) of section 82(1)) or in a person other than the applicant (by virtue of paragraph (b)(i) of section 82(1)).
294. Subsection (1)(d) of section 82 enables the court to extinguish any parental rights in relation to the child which immediately before the making of the order, vested in a parent or guardian of the child and which by virtue of paragraph (a)(ii) of section 82(1) vest in the local authority or by virtue of paragraph (b)(ii) vest in a person other than the authority.
295. Subsection (1)(e) of section 82 allows the court to specify arrangements relating to contact between the child and any other person the court considers appropriate and as the court considers to be in the best interests of the child.
296. In making a permanence order, the court may also determine any question which has arisen in connection with any parental responsibilities or parental rights in relation to the child or any other aspect of the welfare of the child (section 82(1)(f)).
297. Subsection (2) defines the 'appropriate period' referred to in subsection (1). For the responsibility set out at subsection 1(1)(b)(ii) of the 1995 Act (responsibility to provide guidance), the appropriate period begins with the making of the permanence order and ends with the child's 18<sup>th</sup> birthday. For any other case, the appropriate period begins with the making of the permanence order and ends on the child's 16<sup>th</sup> birthday.

### **Section 83 - Order granting authority for adoption: conditions**

298. An application for a permanence order may also include a request for authority for the child to be adopted. Where sought, this can only be granted where the conditions set out at section 83(1) are met. These conditions are: that the applicant has sought such authority in their application for a permanence order; that the court is satisfied that the child has already been placed for adoption or is likely to be so placed; that the court is satisfied that each parent or guardian of the child has understood the effect of the making of an adoption order and has consented to its making; or that the court has dispensed with their consent on one of the grounds mentioned in subsection (2); and that the court considers that it would be better for that child for the authority to be granted than for it not to be granted.
299. Subsection (2) provides for the grounds on which a parent's or guardian's consent can be dispensed with. These are the same as the grounds set out at section 31 in relation to

adoption order. The grounds are that the parent or guardian is dead; that the parent or guardian cannot be found or is incapable of giving consent; that subsection (3) or (4) applies; or, where neither of those subsections applies, the welfare of the child otherwise requires the consent to be dispensed with.

- 300. Subsection (3) applies where the parent or guardian has parental responsibilities or parental rights in relation to the child, other than those mentioned in sections 1(1)(c) and 2(1)(c) of the 1995 Act (maintaining contact with the child on a regular basis); where, in the opinion of the court, the parent or guardian is unable satisfactorily to discharge those responsibilities or exercise those rights and is likely to continue to be unable to do so.
- 301. Subsection (4) applies where the parent or guardian has, by virtue of the making of a permanence order which does not include authority for the child to be adopted, no parental responsibilities or parental rights in relation to the child and it is unlikely that he or she will obtain such parental responsibilities or parental rights.
- 302. Subsection (5) defines 'parent' for the purposes of subsections (1)(c) and (2) (those who must give their consent or have it dispensed with) as meaning a parent who has any parental responsibilities or parental rights in relation to the child, or a parent who has lost such responsibilities and rights by virtue of a previous permanence order which did not include authority to adopt.

#### ***Section 84 - Conditions and considerations applicable to making of order***

- 303. Subsection (1) (as read with subsection (2)) provides that a permanence order may not be made in respect of a child who is aged 12 or over unless the child consents, except where the court is satisfied that the child is incapable of consenting to the order. Under subsection (3) a court may not make a permanence order unless it considers that it would be better for the child that the order be made than not. By virtue of subsection (4), when considering whether or not to make a permanence order and what provision the order should make, the court's need to safeguard and promote the welfare of the child throughout childhood must be its paramount consideration.
- 304. Under subsection (5), the court must consider particular factors before making a permanence order. Under subsection (5)(a), the court must, after taking account of the child's age and maturity, as far as is reasonably practicable, give the child the opportunity to indicate whether he or she wishes to express his or her views on the making of a permanence order, and if so, to give the child the opportunity to express those views.
- 305. Where the child does express views subsection (5)(b) places a duty on the court to have regard to such views. In addition, when considering whether or not to make a permanence order, the court must have regard to the child's religious persuasion, racial origin and cultural and linguistic background and the likely effect on the child of the making of the order. Subsection (5)(c) requires that the court must also be satisfied that there is no person who has the parental right to have the child living with them or otherwise to regulate the child's residence, or, where there is such a person, the court must be satisfied that the child's residence with the person is, or is likely to be, seriously detrimental to the welfare of the child.
- 306. Subsection (6) provides that a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of subsection (5)(a).

#### ***Section 85 - Child in respect of whom order may be made***

- 307. Section 85(1) provides that a permanence order may be made even in respect of an adopted child. Section 85(2) specifies the only category of child in respect of whom an order may not be made, namely a child who is or has been married or a civil partner.

***Section 86 - Representations***

308. Subsection (1) allows persons specified in subsection (2) to make representations to the court in relation to an application for a permanence order. The court must allow these people to make representations should they wish to do so.
309. The persons specified in subsection (2) are the local authority making the application; the child or the child's representative; anyone who has parental responsibilities and parental rights in relation to the child; and any other person who claims an interest.

***Section 87 - Effect of order on existing parental right***

310. By virtue of section 87, the making of a permanence order extinguishes the parental right mentioned in section 2(1)(a) of the 1995 Act (the right to have the child live with them or otherwise to regulate the child's residence) which immediately before the making of the order was vested in a parent or guardian of the child in respect of whom the order is made.

***Section 88 - Effect of order on existing orders***

311. Section 88 provides that, where a person has parental responsibilities or parental rights in relation to a child through the making of an existing permanence order or an order under section 11 of the 1995 Act (court orders relating to parental responsibilities etc) then, on the making of a new permanence order, these responsibilities and rights are lost and the earlier order is revoked. Under subsection (3), a court must ensure that any parental responsibilities and parental rights which were vested in a person by virtue of the earlier order are vested in a person by virtue of the new permanence order thereby preventing any parental responsibilities or parental rights from being unallocated and leaving the child without protection.

***Section 89 - Revocation of supervision requirement***

312. By virtue of this section, where a child in respect of whom a permanence order is to be made is subject to a supervision requirement, and the appropriate court is satisfied that the making of the permanence order would render any compulsory measures of supervision unnecessary, the court must make an order providing that the supervision requirement ceases to have effect on the making of the permanence order.

***Section 90 - Precedence of court orders and supervision requirements over order***

313. This section provides that where a local authority has, by virtue of a permanence order, parental responsibilities or parental rights in relation to a child, the authority must not act in any way which would be incompatible with any other court order relating to the child or the child's property or any supervision requirement to which the child is subject.

***Section 91 - Exercise of parental right under order***

314. This section provides that where, by virtue of section 82(1)(a) or (b) (ancillary provisions in a permanence order) a parental right is vested in two or more persons, those persons may exercise the right without the consent of any other person who has the parental right. This section does not apply if the permanence order vesting the right or regulating its exercise specifies otherwise.

***Section 92 - Variation of ancillary provisions in order***

315. This section relates to the variation of ancillary provisions in a permanence order. It specifies those who can request such a variation, the power of the court when making a variation and the effect of a variation.
316. Subsection (2) provides that the court may, on an application, vary any ancillary provisions in a permanence order.

317. Subsection (3) lists those who can apply for variation of the ancillary provisions of a permanence order. These are the local authority which made the original application for a permanence order; the child who is subject to the permanence order (if aged 12 or over or, where under 12, is considered by the court to be mature enough to understand the effect of the order); anyone who was granted parental responsibilities and parental rights by the permanence order; anyone who lost parental responsibilities and parental rights by virtue of the permanence order or a variation of it; and any other person who claims an interest. In practice those who have lost parental responsibilities and parental rights by virtue of the making of the permanence order are likely to apply for a variation of an order in order to secure or vary contact arrangements with the child. However, such people may apply to vary any aspect of the permanence order. Anyone other than the local authority which made the original application for the permanence order will be required to obtain the leave of the court before such an application can be made (see section 94(4) and (5) of the Act).
318. Subsections (4) and (5) apply where a court varies the ancillary provision of a permanence order so as to vest in a person a parental responsibility or parental right that before the variation vested in another person. In this case, the court may include in the variation a provision extinguishing the parental responsibility or parental right that was vested in the other person.
319. Subsection (6) provides that section 84(4), (5)(a) and (b) and (6) (considerations applicable to the making of an order) apply to the variation of a permanence order as they do to the making of a permanence order. A court considering an application for variation of a permanence order must therefore apply the considerations contained in those provisions in this context too.
320. By virtue of subsection (7), “ancillary provisions” in subsections (1) and (2) has the same meaning as in section 82 of the Act (permanence orders: ancillary provisions).
321. Subsection (8) defines a variation for the purposes of this section as including adding to, omitting or amending any of the provisions of the permanence order.

### ***Section 93 - Amendment of order to grant authority for child to be adopted***

322. By virtue of subsection (1), this section applies where a permanence order is in place in respect of a child, but it does not include authority for the child to be adopted. Under subsection (2), an appropriate court may, on application by the local authority which applied for the original permanence order, grant authority for the child to be adopted if the court considers that it is better for the child that the measure be granted, if the court is satisfied that the child has already been placed for adoption or will soon be placed for adoption and if the condition in subsection (3) or (4) is met.
323. Under subsection (3), dealing with parental consent, the parent or guardian of the child must fully understand what the effect of an adoption order would be and must consent to such an order being made in respect of the child. By virtue of subsection (4), the court can dispense with the consent of the child’s parent or guardian on any of the grounds in section 83 of the Act, which apply to the inclusion of such authority on the grant of a permanence order.
324. Subsection (5) provides that the conditions and considerations in section 84(4), (5)(a) and (b) and (6) of the Act apply to the amendment of a permanence order as they do to the making of a permanence order.
325. Subsection (6) defines “guardian” and “parent” for the purposes of this section as being a guardian or parent who has parental responsibilities or rights or who had such responsibilities or rights but as a result of a previous permanence order no longer has such responsibilities or rights.



### ***Section 94 - Proceedings***

326. Under subsection (1), in any proceedings relating to an application by a local authority for the variation of a permanence order, the appropriate court must permit any person who is affected by the permanence order and who wishes to make representations to the court, to do so.
327. By virtue of subsection (2), in any proceedings relating to an application for the variation of a permanence order, by anyone other than the local authority which made the original permanence order application, those persons specified at subsection (3) have a right to make representations to the appropriate court. Those persons are: the local authority which made the original application for the permanence order; the child who is subject to the order (if aged 12 years or over or, where under 12, is considered by the court to be capable of understanding the effect of the order); any person who has parental responsibilities and parental rights in relation to the child; anyone who has a duty or power by virtue of the permanence order; any person who had parental responsibilities and parental rights immediately before the making of the order, which the order then vested in another person; any person who had parental responsibilities and parental rights conferred by virtue of the original permanence order but which have been vested in another person by virtue of any variation of the order; and anyone else who claims an interest.
328. By virtue of subsection (4), if a person other than the local authority which made the original permanence order application seeks to apply for a variation to a permanence order they must obtain leave of the court to do so. Subsection (5) provides that the court must grant leave if there has been a material change in circumstances directly relating to the provisions of the order or that for any other reason it is proper to allow the application to be made.
329. Subsection (6) sets out the issues to which a court must have particular regard in determining whether there has been a material change in circumstances. These are any aspect of the welfare of the child and the circumstances of his or her parent(s) or guardian or any persons mentioned in subsection (3)(e) or (f) (being those who had parental responsibilities or rights but which the order or a variation of it vested in another person).
330. Subsection (7) makes clear that any references to an application for variation of a permanence order also include references to an application to amend the order to include authority for the child to be adopted.

### ***Section 95 - Duty of children's hearing to prepare report for court***

331. This section concerns the interaction between the children's hearing and the court to which an application to make or vary a permanence order has been made. It provides that where there is a 'live' application for a permanence order in relation to a child, or for variation of such an order and where a children's hearing proposes to make or modify a supervision requirement in respect of that child, the children's hearing must prepare a report for the court to which application has been made. The report must contain such information as Scottish Ministers may prescribe in regulations (subsections (1) and (2)).
332. Subsection (3) makes clear that the reference to variation of a permanence order also includes a reference to amendment of the order to include authority for the child to whom the order relates to be adopted

### ***Section 96 - Application: effect on supervision requirement***

333. By virtue of this section, where an application has been made for a permanence order to be made in respect of a child or for a variation or amendment of a permanence order, no supervision requirement in respect of the child may be made or modified until the application is determined (or withdrawn or abandoned). This does not apply where the



court to which the application is made for the order, or variation or amendment of it, refers the matter to the Principal Reporter, whether following receipt of a report under section 95 or not. .

### ***Section 97 - Interim orders and revocation of supervision requirement***

334. Under this section, where an application has been made for a permanence order in respect of a child or for a variation of a permanence order, the court may make such interim orders as it thinks fit. Where the child is subject to a supervision requirement and the court is satisfied that, were it to make an interim order, compulsory measures of supervision would be rendered unnecessary, the court must make an order providing that the supervision requirement ceases to have effect on the making of the interim order.
335. Subsection (5) provides that, if the child in respect of whom the interim order is made is subject to a supervision requirement and the provisions of the order conflict or are inconsistent with the requirement, the provisions of the interim order prevail.
336. Subsection (6) makes clear that the reference to variation of a permanence order also includes a reference to amendment of the order to include authority for the child to whom the order relates to be adopted.

### ***Section 98 - Revocation***

337. By virtue of subsection (1), a court may revoke a permanence order when it is satisfied that it is appropriate to do so, on the application of any of those people listed at subsection (2). In particular, the court should consider whether there has been a material change in circumstances directly relating to the provisions of the order and any wish by the parent or guardian of the child to have parental responsibilities or rights reinstated.
338. Subsection (2) lists those persons who can apply for revocation of the permanence order as the local authority which applied for the permanence order and anyone else affected by the order who has obtained the leave of the court to apply for a revocation.
339. The conditions and considerations in section 84(4), (5)(a) and (b) and (6) of the Act apply to the revocation of a permanence order under this section as they apply to the making of a permanence order.

### ***Section 99 - Duty of local authority to apply for variation or revocation***

340. Where a permanence order has been made, the local authority on whose application the order was made must apply to the appropriate court, as soon as is reasonably practicable, for the variation or revocation of the order where it determines that there has been a material change of circumstances directly relating to the provisions of the order and, consequently, that the order should be varied or revoked. The term 'variation' includes amendment of the order and therefore includes seeking provision granting authority for the child to be adopted.

### ***Section 100 - Revocation: order under section 11 of 1995 Act***

341. This section applies where a court has revoked a permanence order in respect of a child. When a court revokes the order, it must, by virtue of subsection (2), consider whether to make an order under section 11 of the 1995 Act (court orders relating to parental responsibilities etc) imposing on a particular person parental responsibilities and parental rights in regard to the child.

### ***Section 101 - Local authority to give notice of certain matters***

342. This section applies (a) where a permanence order is in force which includes provision granting authority for the child to be adopted, and (b) following the making of the order (or, if applicable, the amendment of it to include authority for the child to be

adopted) one of the following events occurs. Those events are that the child is placed for adoption, an adoption order is made in respect of the child or the child ceases to be placed for adoption otherwise than on the making of an adoption order. When any of these events occur, the local authority must, as soon as is reasonably practicable, give notice of the event to persons falling within subsection (4), namely those who consented to the making of the order under section 83(1)(c)(i) or section 93(3) of the Act and those whose consent to the making of the order was dispensed with under section 83(1)(c)(ii) or 93(4). The local authority does not need to give such notice if the person who would receive the notice has indicated that they do not want to be notified.

### ***Section 102 - Effect of subsequent adoption order on permanence order***

343. By virtue of this section, where a child who is subject to a permanence order becomes subject to an adoption order, the permanence order ceases to have effect.

### ***Section 103 - Restriction on making of orders under section 11 of 1995 Act***

344. This section inserts a new section 11A (restrictions on making of orders under section 11) into the Children (Scotland) Act 1995.
345. When a permanence order is in force, the court may not make an order such as is mentioned in section 11(2)(a) to (e), of the 1995 Act in respect of a child who is subject to the permanence order.

### ***Section 104 - Permanence orders: rules of procedure***

346. This section allows rules of court to be made which make provision in relation to applications for permanence orders, applications for variation or revocation of permanence orders (including, by virtue of subsection (5), an application to amend a permanence order to include authority for the child to be adopted) and applications for leave to apply for variations or revocations.
347. Subsection (2) provides that where an application is made for a permanence order containing a request that the order include provision granting authority for the child to be adopted, or where an application is made under section 93(2), rules must require certain persons to be notified of certain matters. By virtue of subsection (3) these are every person who can be found and whose agreement or consent to the making of the order is required to be given or dispensed with or, if no such person can be found, any relative prescribed by rules who can be found (subsection (3)(a)). These people must be notified that the application has been made; of the date on which and the place at which the application will be heard; that the person is entitled to be heard on the application; and that the person does not need to attend the hearing if they do not wish to do so, unless required by the court (subsections (3)(a) and (4)).
348. Under subsections (2)(b) and (3)(b), the father of the child, if he has never had parental responsibilities and parental rights in relation to the child, and if he can be found, must be informed of the date on which and the place at which the application will be heard.

## **Part 3**

### **Miscellaneous**

### ***Section 105 - Notification of proposed application for order***

349. This section applies where a local authority proposes to apply for a permanence order or becomes aware that an application for an adoption order for a child in its area is planned and the following three conditions are all met. The first of these conditions is that the father of the child is not married to the mother of the child on the “relevant date” (i.e. when the local authority decides to apply for the permanence order or becomes aware of the planned application for an adoption order. The second condition is that on

the relevant date the father of the child does not have, and has never had, parental responsibilities and parental rights in regard to the child. The third condition is that the local authority knows the identity and whereabouts of the father or is able to find out this information using reasonable and practicable steps.

350. Under subsection (2), where this section applies, a local authority must notify the father either that it proposes to apply for a permanence order or that an adoption order application has been, or is to be, made. The local authority must also provide the father with specific information, as prescribed in regulations about the processes of applying for the order in question. The local authority must provide notice at least 4 weeks before the relevant date on which it intends to apply for the permanence order or as soon as is reasonably practicable when it becomes aware of the application, or intended application, for the adoption order.

***Section 106 - Child subject to supervision requirement: duty to refer to Principal Reporter***

351. This section provides that, where a registered adoption service intends to place for adoption a child who is subject to a supervision requirement under the 1995 Act, the registered adoption service must refer the case to the Principal Reporter. Subsection (3) gives the Scottish Ministers the power to make regulations specifying a time period in which such a referral should be made.

***Section 107 - Making of adoption order no longer to be bar to making of contact order***

352. Section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc) is amended by this section. That section prevented persons who have lost parental responsibilities and parental rights through the making of an adoption order, a freeing order, a parental responsibilities order or a parental order by virtue of the Human Fertilisation and Embryology Act 1990 from applying for a contact order in respect of the child under section 11(2)(d) of the 1995 Act. The amendment allows persons who have lost their parental responsibilities and parental rights by virtue of the making of an adoption order to apply for a contact order with the leave of the court.

***Section 108 - Rules: appointment of curators ad litem and reporting officers***

353. By virtue of this section, a court can appoint a curator *ad litem* or a reporting officer to act in an application for a relevant order (defined by subsection (4) as an adoption order, a permanence order or an order under section 65 of the Act) in such cases as are prescribed by rules. Paragraphs (a) and (b) of subsection (1) outline the roles of these officers: a curator *ad litem* will act to safeguard the interests of the child during proceedings; a reporting officer will witness agreements to adoption and perform other duties that may be prescribed.
354. Subsection (2) provides that the rules made under subsection (1), may, in particular, make provision enabling the reporting officer to be appointed before the application is made and enabling the court to appoint the same person as curator *ad litem* and reporting officer.
355. Under subsection (3), any rules made under subsection (1) may not allow any person who is employed by the adoption agency which has applied for an adoption order in respect of the child to be appointed as a curator *ad litem* or reporting officer. Similarly, rules may not allow any person who is employed by the local authority who has applied for a permanence order in respect of the child to be appointed as a curator *ad litem* or reporting officer.

***Section 109 - Proceedings to be in private***

356. By virtue of this section, any proceedings before the court in relation to any of sections 24, 29, 30, 59, 80, 92, 93 and 99 of this Act must be heard and determined in private, unless the court specifies otherwise.

***Section 110 - Allowances for care of certain children: regulations***

357. Subsections (1) and (2) give the Scottish Ministers power to make regulations making provision about payments by a local authority in respect of a child if (a) he or she is placed by the local authority under section 26(1)(a) of the Children (Scotland) Act 1995 or (b) the child is required by virtue of section 70(3)(a) of that Act to reside with a person other than a parent of the child or, (c) were the child not residing with a relative, the child would be a 'looked after' child under section 25(1) of the 1995 Act.
358. By virtue of subsection (3) these regulations may, in particular, specify descriptions of persons to whom payments may be made; specify circumstances in which payments may be made; and specify rates of payments, including minimum required or recommended rates in specified circumstances and a requirement for local authorities who do not comply with the recommended rates to publish their reasons for not doing so.
359. By virtue of subsection (4) the child does not cease to be a child placed under section 26(1)(a) of the 1995 Act simply because a permanence order gives parental responsibilities or parental rights to a member of the family with whom the child is placed. Under subsection (5) a child does not fall within subsection (2)(c) if the relative is a guardian of the child (parents are already excluded by not being covered by the definition of 'relative' in section 119(1)). Subsection (6) provides that it is immaterial for the purposes of paragraph (c) of subsection (2) if the relative has any parental responsibilities or rights in relation to the child.

***Section 111 - Evidence of consent***

360. By virtue of subsection (1), any document signifying consent required by this Act, if witnessed in accordance with rules of the court, is sufficient evidence of the signature of the person by whom it was executed. Any such document which purports to be witnessed in accordance with rules is presumed to have been executed and witnessed on the date and place specified in the document, unless otherwise shown.

***Section 112 - Service of notices etc.***

361. This section provides that any notice or information required to be given under the Act may be sent by post.

***Section 113 - Admissibility of certain documents as evidence***

362. By virtue of this section any document which is receivable as evidence of any matter in England and Wales under section 77(4) and (5) of the Adoption and Children Act 2002 (adopted children register), or in Northern Ireland under Article 63(1) of the Adoption (Northern Ireland) Order 1987 (evidence of adoptions, etc.) is considered sufficient evidence in Scotland of the matter to which it relates.

**Part 4**

**General**

***Section 114 - Rules of procedure***

363. Subsection (1) provides a power for any matter relating to procedure to be dealt with by court rules. Subsection (2) specifies that any court rules dealing with an application for an adoption order must require notification of certain people (as set out

at subsection (3)) of particular aspects of the adoption case set out at subsection (4) and requires notification of the father of the child (if he can be found) who does not have and has never had parental responsibilities and parental rights in respect of the child of the matters at subsection (4)(a) and (b), those being that the application has been made and the date on which and place at which the application will be heard.

364. The people who must be notified, as set out in subsection (3), are anyone whose consent to the making of an adoption order is required and who can be found, or, if no such person can be found, any relative prescribed by rules who can be found; anyone who has consented to the making of an adoption order under section 20 of the 2002 Act (advance consent to adoption) (and who has not withdrawn that consent); and anyone who, if leave were given under section 31(12) of the Act would be entitled to oppose the making of the order.
365. Under subsection (4) the people listed at subsection (3) must be notified that the application has been made, of the date on which the application will be heard and the place where it will be heard; of the fact that the person is entitled to be heard on the application; and that that person does not have to attend the hearing unless they wish to do so, or are requested to do so by the court.
366. By virtue of subsection (6), in the case of an application under section 59 of the Act, rules must require every person who can be found, and whose agreement to the making of the order would be required if the application were for an adoption order, other than a Convention order, to be notified of the matters in subsection (4).

### ***Section 115 - Offences by bodies corporate and partnerships***

367. By virtue of subsection (1), where an offence is committed under the Act by a body corporate which is proved to have been committed with the consent or the connivance of a “relevant person”, or because of any neglect by the “relevant person”, the relevant person, as well as the body corporate, will be guilty of the offence and liable to punishment.
368. Where the affairs of a body corporate are managed by its members, a member is regarded as a relevant person in relation to subsection (1) as regards that person’s management functions in relation to the body (subsection 2).
369. Where any offence is committed by a partnership with the consent or connivance of a partner, or because of the neglect of a partner, the partner and the partnership are guilty of the offence and are liable to punishment (subsection 3).
370. By virtue of subsection (4), a “relevant person” in relation to a body corporate means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any of these capacities.

### ***Section 116 - Ancillary provisions***

371. Under subsection (1), the Scottish Ministers have the power to make, by order, any incidental, supplementary, consequential, transitory, transitional or saving provision as is necessary to give full effect to this Act, or any provision of it. By virtue of subsection (2), such an order may modify any enactment, including the Act itself.

### ***Section 117 - Orders and regulations***

372. This section relates to any orders or regulations made under any provision in the Act.
373. By virtue of subsection (1), any power in the Act to make regulations or orders conferred on the Scottish Ministers or the Registrar General will be exercised by statutory instrument.



374. Subsection (2) provides that any power to make regulations or orders may be used to make different provision for different purposes and includes power to make any incidental, supplementary, consequential, transitory, transitional or saving provisions as the Scottish Ministers or the Registrar General, where appropriate, consider appropriate.
375. Subsection (3) allows any power to make orders or regulations to be exercised in relation to those cases subject to specified exceptions or a particular case or class of cases.
376. By virtue of subsection (4), any statutory instrument containing regulations or an order (other than regulations mentioned in subsection (5) or commencement orders made under section 121) is subject to annulment in the Scottish Parliament.
377. Under subsection (5), any statutory instrument which contains regulations under section 3 of the Act which includes provision amending subsection (4) or (5) of section 1 or regulations under section 38(1) or 74(1) must not be made unless a draft has been laid before and approved by the Scottish Parliament. Similarly, a statutory instrument containing an order under section 116(1) which modifies primary legislations made at Westminster or in the Scottish Parliament is subject to the same affirmative procedure.
378. For the purposes of this section, ‘Registrar General’ has the meaning given by section 57(1) of the Act.

### ***Section 118 - Meaning of “appropriate court”***

379. This section defines what is meant by “appropriate court” in dealing with an application for an order in relation to a child.
380. Subsection (2) provides that, where the child is in Scotland when the application is made, the “appropriate court” is the Court of Session or the sheriff court of the sheriffdom where the child is at the time of the application.
381. By virtue of subsection (3), if the child is not in Scotland and the application is for an adoption order or for a permanence order seeking provision granting authority for adoption of the child the “appropriate court” is the Court of Session.

### ***Section 119 - Interpretation***

382. This is the interpretation section. It provides definitions of many of the expressions used throughout the Act.

### ***Section 120 - Minor and consequential amendments and repeals***

383. This section gives effect to schedule 2 (minor and consequential amendments) and schedule 3 (repeals).

### ***Section 121 - Short title and commencement***

384. This section provides for the short title of the Act. It also provides that the Act comes into force on such days as may be appointed by the Scottish Ministers by order. Different provisions of the Act can come into force on different days for different purposes.

### ***Schedule 1: Registration of adoptions***

385. This schedule is introduced by section 53(4) of the Act and provides for the registration of adoptions.

### **Registration of adoption orders**

386. By virtue of paragraph 1(1), every adoption order must contain a direction to the Registrar General for Scotland to make an entry in the Adopted Children Register. The

form of entry will be as prescribed by regulations made by the Registrar General with the approval of Scottish Ministers.

387. In order to satisfy the requirement at paragraph 1(1), where the precise date of the child's birth is not known, the court is to determine the likely date of the child's birth and this is to be specified in the adoption order as the child's date of birth. Where the country of the child's birth is unknown, if it appears likely that the child was born in the British Islands, the child should be regarded as having been born in Scotland. Otherwise, this information can be excluded from the adoption order and the entry in the Adopted Children Register. Where the application for the adoption order specifies any names in regard to the child, those names are to be recorded in the adoption order as the names of the child. Where the adoption order does not specify these names, the child's original name and the surname of the applicant are to be recorded in the adoption order as the names of the child.
388. On an application for an adoption order in relation to a child, where the identity of the child can be linked to an entry in the register of births, and where the child has not previously been subject to an adoption order made by a court in Scotland, the adoption order must contain a direction to the Registrar General for Scotland to mark that entry in the register of births with the word "Adopted" (paragraph 2(2)). Where the child has previously been subject to an adoption order made by a court in Scotland, the adoption order must contain a direction to the Registrar General for Scotland to mark the relevant entry in the register of births with the word "Re-adopted" (paragraph 3).
389. Where an adoption order is made, it is the responsibility of the clerk of the court which made the order to communicate the order to the Registrar General for Scotland. The Registrar General for Scotland must secure that the direction contained in the order is complied with as soon as is reasonably practicable (paragraph 4).

### **Registration of adoptions in England, Northern Ireland, the Isle of Man and the Channel Islands**

390. Under paragraph 5, when the Registrar General for Scotland is notified of an adoption order made in respect of a child who matches an entry in the register of births in Scotland in a part of the British Islands other than Scotland, and there is no entry for the child in the Adopted Children Register, the Registrar General for Scotland must mark the relevant entry with the word "Adopted" followed by the name of the part of the British Islands in which the adoption order was made in brackets. Where there is an entry for the child in the Adopted Children Register, the Registrar General for Scotland must mark the entry in the register of births with the word "Re-adopted" followed by the name of the part of the British Islands in which the adoption order was made in brackets.
391. Where the Registrar General for Scotland is notified that any such adoption order no longer stands, the Registrar must ensure that the marking is cancelled.
392. Where such an adoption order is cancelled, an extract of the entry is not accurate unless both the marking and the cancellation are omitted.

### **Registration of other adoptions**

393. Under paragraph 6, where a child is adopted under a registrable foreign adoption (by which is meant a Convention order or an overseas adoption), the Registrar General for Scotland must make an entry in the Adopted Children Register if there is enough information to allow this.
394. Where such an adoption takes place, and there is enough information to allow it, the Registrar General for Scotland must make an entry in the register of births showing "Adopted" or "Re-adopted" as the case may be, followed by the name of the part of the British Islands in which the adoption order was made in brackets.

395. An application under paragraph 6 must be made in the prescribed manner and any entry in the Adopted Children Register must be made in the prescribed manner, as made by the Registrar General for Scotland with the approval of the Scottish Ministers.

#### **Amendment of orders and rectification of registers**

396. By virtue of paragraph 7, on the application of an adopter or adopted person, a court which made an adoption order can amend the order by correcting any errors it contains.
397. Within one year of the adoption order being made, on application by an adopter or adopted person, a court can amend the adoption order to include any new name which has been given to the adopted person or taken by the adopted person.
398. The court which made the adoption order, may, on application by an adopter or adopted person, revoke a direction for the marking of an entry in the register of births or the Adopted Children Register if the court is satisfied that the direction was wrongly included.
399. Where an adoption order is amended, the clerk of the court must ensure that the amendment is communicated to the Registrar General for Scotland.
400. The Registrar General for Scotland must ensure that the relevant entries are amended or cancelled, as the case may be.
401. Where an adoption order is cancelled or quashed or otherwise falls, the court must direct the Registrar General for Scotland to cancel any relevant entry in the Adopted Children Register or the register of births.
402. Where an adoption order has been amended, any extract issued in accordance with section 54 (searches and extracts) must be a copy of the entry as amended without any note or marking relating to the amendment or any matter cancelled in relation to the order.
403. Where the marking of an entry is cancelled, an extract of the entry is not to be treated as accurate unless both the marking and the cancellation are excluded.
404. Where the Registrar General for Scotland has enough information to do so, any entry in the Adopted Children Register or register of births can be cancelled or amended in relation to a registrable foreign adoption (by which is meant a Convention order or an overseas adoption). Where such an entry is amended, an extract of the entry is not accurate unless it shows the entry as amended, but without indicating that it has been amended.

#### **Marking of entries on re-registration of birth**

405. Under paragraph 8, where an entry in the register of births has been marked in accordance with this schedule and the birth is re-registered, the entry on re-registration must be marked in the same way.

#### ***(b) Schedule 2: Minor and consequential amendments***

406. This schedule contains amendments to various enactments to take account of the Act.

#### ***Schedule 3: Repeals***

407. This schedule lists the enactments and parts thereof which are repealed by the Act.