



# Adoption and Children (Scotland) Act 2007

2007 asp 4

## PART 1

### ADOPTION

#### CHAPTER 1

##### THE ADOPTION SERVICE

###### *The adoption service*

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

- (1) Each local authority must—
  - (a) to the extent that it already provides an adoption service in its area, continue to do so, and
  - (b) to the extent that it does not provide such a service in its area, provide such a service there.
- (2) In this Act, “adoption service” means services designed to meet the needs, in relation to adoption, of persons mentioned in subsection (3).
- (3) Those persons are—
  - (a) children who may be adopted
  - (b) persons who have been adopted,
  - (c) parents and guardians of children mentioned in paragraph (a),
  - (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—
    - (i) children mentioned in paragraph (a), or

*Status: Point in time view as at 28/09/2009.*

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- (ii) persons mentioned in paragraph (b),
  - (g) persons who may adopt a child,
  - (h) persons who have adopted a child,
  - (i) in relation to persons mentioned in paragraph (g) or (h), children of, or children treated as children of, such persons, and
  - (j) any other persons who are—
    - (i) affected by the placing, or proposed placing, of a child for adoption, or
    - (ii) affected by an adoption.
- (4) An adoption service includes, in particular, services consisting of or including—
- (a) arrangements for assessing children who may be adopted,
  - (b) arrangements for assessing prospective adopters,
  - (c) arrangements for placing children for adoption,
  - (d) the provision of information about adoption to any of the persons mentioned in subsection (3), and
  - (e) adoption support services.
- (5) In this Act, “adoption support services” means services consisting of or including the provision of—
- (a) counselling to any of the persons mentioned in subsection (3),
  - (b) guidance about adoption to such persons,
  - (c) any other assistance in relation to the adoption process that the local authority providing an adoption service in a particular case considers appropriate in the circumstances of that case.

#### Commencement Information

- II** S. 1 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## 2 Carrying out of duties imposed by section 1

- (1) For the purpose of carrying out the duties imposed by section 1(1) efficiently and effectively, a local authority must have regard to—
- (a) the other services that it provides in its area in carrying out the functions of a local authority under any of the enactments mentioned in section 5(1B) of the Social Work (Scotland) Act 1968 (c. 49) (power of the Scottish Ministers to issue certain directions) including, in particular, those functions in so far as they relate to children, and
  - (b) any registered adoption service provided there.
- (2) A local authority may carry out the duties imposed by section 1(1) by securing the provision of its adoption service by a registered adoption service.
- (3) In this section, “registered adoption service” means an adoption service provided as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8) and registered under Part 1 of that Act.

*Status: Point in time view as at 28/09/2009.*

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#### Commencement Information

- I2** S. 2(1)(2) in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- I3** S. 2(3) in force at 7.4.2008 for specified purposes by S.S.I. 2008/130, art. 2, Sch.
- I4** S. 2(3) in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### 3 Adoption service: regulations

The Scottish Ministers may by regulations—

- (a) amend subsection (4) or (5) of section 1 by—
  - (i) adding further services,
  - (ii) modifying the services mentioned in those subsections,
- (b) make further provision about adoption services.

#### Commencement Information

- I5** S. 3 in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- I6** S. 3(b) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.

### 4 Local authority plans

- (1) Before the expiry of such period as the Scottish Ministers may direct, each local authority must prepare and publish a plan for the provision of the adoption service which it is required by section 1(1) to continue to provide, or to provide, in its area.
- (2) Each local authority—
  - (a) must from time to time review the plan published by it under subsection (1), and
  - (b) may, having regard to any such review, prepare and publish—
    - (i) modifications of the plan, or
    - (ii) a plan in substitution for the plan.
- (3) In preparing a plan, or carrying out a review, under this section a local authority must consult—
  - (a) each Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29) which provides services under that Act in the area of the local authority,
  - (b) such voluntary organisations as appear to the authority to represent the interests of persons who use, or are likely to use, the adoption service in that area,
  - (c) such voluntary organisations as appear to the authority to provide services in that area which, were they to be provided by the authority, might be an adoption service, and
  - (d) such other persons as may be prescribed by regulations made by the Scottish Ministers.

*Status: Point in time view as at 28/09/2009.*

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- (4) A local authority may incorporate a plan published under subsection (1) in any plan published by the authority under section 19(1) of the 1995 Act (local authority plans for services for children).
- (5) Where a local authority incorporates a plan as mentioned in subsection (4), it need not separately publish a plan under subsection (1).
- (6) Subsections (2) and (5) apply to a plan modified or substituted under subsection (2) as they apply to a plan published under subsection (1).
- (7) The Scottish Ministers may give a local authority directions as to the carrying out of its functions under subsection (2).
- (8) The Scottish Ministers may vary or revoke any direction given under subsection (7).

#### Commencement Information

- I7** S. 4 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## 5 Guidance

- (1) Subsection (2) applies where a local authority is carrying out its function under section 1 to continue to provide, or to provide, an adoption service or to secure the provision of such a service.
- (2) The local authority must have regard to any guidance given by the Scottish Ministers.
- (3) Guidance such as is mentioned in subsection (2) may, in particular, contain provision in relation to—
  - (a) how a local authority should assess (or reassess) the needs of a person for adoption support services,
  - (b) how the power conferred by section 9(1)(b) should be exercised,
  - (c) the classes of person in relation to whom that power should be exercised,
  - (d) how responsibility for the provision of an adoption service should be transferred from one local authority to another.
- (4) The Scottish Ministers may vary or revoke any guidance such as is mentioned in subsection (2).

#### Commencement Information

- I8** S. 5 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## 6 Assistance in carrying out functions under sections 1 and 4

- (1) Where it appears to a local authority that an appropriate person could assist the authority in carrying out any of its functions under section 1 or 4, it may require the person to assist the authority in the way specified in the requirement.

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- (2) An appropriate person need not comply with a requirement made by virtue of subsection (1) if—
- (a) it would not be reasonably practicable to do so,
  - (b) doing so would be incompatible with the person's functions (whether statutory or otherwise), or
  - (c) where the person is not a natural person, doing so would unduly prejudice the carrying out of such functions.
- (3) For the purposes of this section, a person is “appropriate” if the person is—
- (a) another local authority,
  - (b) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),
  - (c) such other person as may be prescribed by regulations made by the Scottish Ministers.

#### Commencement Information

- 19** S. 6 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## 7 Meaning of “adoption service” in Regulation of Care (Scotland) Act 2001

In section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8) (meaning of “care services”), for subsections (11) and (12) substitute—

- “(11) An adoption service is any service which is—
- (a) provided by a local authority under subsection (1) of section 1 of the Adoption and Children (Scotland) Act 2007 (asp 4); or
  - (b) provided by a person other than a local authority and which consists of, or includes, services mentioned in subsection (4) of that section (the reference in subsection (5) of that section to a local authority being taken, for the purposes of this paragraph, to be a reference to a person other than a local authority), (whether the person functions generally or in relation to a service provided, or to be provided, under that section).
- (12) For the purposes of subsection (11)(b) above—
- (a) the making by a person of arrangements for the adoption of a child by a relevant person, or
  - (b) the placing by a person of a child for adoption with a relevant person, is not an adoption service.
- (12A) In subsection (12) above, “relevant person” means—
- (a) a parent of the child,
  - (b) any other relative of the child, or
  - (c) where a parent of the child is a member of a relevant couple, the other member of the couple.
- (12B) In subsection (12A) above—
- “relative” has the meaning given by section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4),

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“relevant couple” is to be construed in accordance with section 29(3) of that Act.”.

#### Commencement Information

**I10** S. 7 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### 8 Adoption agencies: regulations about carrying out of functions

- (1) The Scottish Ministers may make regulations for any purpose relating to the carrying out of its functions by a registered adoption service.
- (2) The Scottish Ministers may make regulations with respect to the carrying out by local authorities of their functions in relation to adoption.
- (3) Regulations under this section may in particular make provision for or in connection with—
  - (a) specifying 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,
  - (b) requiring such an application to be made within a period specified in the regulations.

#### Commencement Information

**I11** S. 8 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.

**I12** S. 8 in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### *Adoption support services*

### 9 Assessment of needs for adoption support services

- (1) A local authority—
  - (a) must, on the request of a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, make an assessment of the needs of the person for adoption support services,
  - (b) may, on the request of a person mentioned in paragraph (j) of that subsection, make an assessment of the needs of the person for such services.
- (2) Where a local authority makes an assessment of the needs of a person for adoption support services under subsection (1), the authority must decide whether the needs of the person call for the provision of such services.
- (3) A local authority making an assessment of needs under subsection (1) must—
  - (a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and
  - (b) have regard to such matters as may be so prescribed.

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#### Modifications etc. (not altering text)

- C1** S. 9 applied (28.9.2009) by [Adoption Support Services and Allowances \(Scotland\) Regulations 2009 \(S.S.I. 2009/152\)](#), regs. 1, 4

#### Commencement Information

- I13** S. 9(1)(2) in force at 28.9.2009 by [S.S.I. 2009/267](#), arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)
- I14** S. 9(3) in force at 20.4.2009 for specified purposes by [S.S.I. 2009/147](#), art. 2, [Sch.](#)
- I15** S. 9(3) in force at 28.9.2009 in so far as not already in force by [S.S.I. 2009/267](#), arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

## 10 Provision of services

- (1) On the request of a person mentioned in subsection (3) of section 1, a local authority must provide adoption services of a type mentioned in paragraph (d) of subsection (4) of that section to the person.
- (2) On the request of a person mentioned in paragraph (a), (c) or (g) of subsection (3) of section 1, a local authority—
  - (a) must provide adoption services of a type mentioned in paragraphs (a) to (c) of subsection (4) of that section to the person, and
  - (b) may, without prejudice to subsection (4)(a), provide adoption support services to the person.
- (3) For the purposes of subsection (2), it is immaterial whether the local authority has made an assessment of the needs of the person under section 9(1)(a).
- (4) Where a local authority decides under section 9(2) that the provision of adoption support services is called for in respect of—
  - (a) a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, the authority must provide the services to the person,
  - (b) a person mentioned in paragraph (j) of that subsection, the authority may provide the services to the person.

#### Commencement Information

- I16** S. 10 in force at 28.9.2009 by [S.S.I. 2009/267](#), arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

## 11 Urgent provision

- (1) If in the opinion of a local authority a person mentioned in subsection (3) of section 1 requires adoption support services as a matter of urgency, nothing in section 9 prevents the authority from providing, or arranging for the provision of, those services for the person without first carrying out an assessment under that section of the person's needs for adoption support services.
- (2) If by virtue of subsection (1) a local authority provides, or arranges for the provision of, adoption support services the authority must, as soon as is reasonably practicable

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after such provision, make an assessment of the person's needs for adoption support services.

#### Commencement Information

**I17** S. 11 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## 12 Power to provide payment to person entitled to adoption support service

- (1) Subsection (2) applies where a local authority—
  - (a) has, in respect of a person, an obligation to provide, or secure the provision of, an adoption support service under this Part, or
  - (b) has a power so to provide and determines it should provide.
- (2) Subject to subsection (4), the authority may, after having regard to the matters mentioned in subsection (3), provide the person with a payment instead of the service.
- (3) Those matters are—
  - (a) the person's eligibility for assistance from any other body,
  - (b) where the person is so eligible, the availability to the person of that assistance at the time when the service might have been provided to the person by the authority,
  - (c) the ability of the authority to provide, or secure the provision of, the service, and
  - (d) the person's need for the service.
- (4) A payment under subsection (2) may be made subject to such conditions (including conditions as to repayment) as the authority considers reasonable.
- (5) In imposing conditions under subsection (4), the authority must have regard to the person's eligibility for assistance from any other body.

#### Commencement Information

**I18** S. 12 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### Regulations

## 13 Regulations

- (1) The Scottish Ministers may by regulations make provision for or in connection with—
  - (a) determining in circumstances specified in the regulations which local authority is, or may become, responsible for—
    - (i) the provision of an adoption service,
    - (ii) the making of an assessment of needs under section 9(1)(a),
  - (b) determining the time at which, and the circumstances in which, a local authority's duty to provide an adoption service ends,



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- (c) specifying the circumstances in which a local authority may continue to provide an adoption service after the time determined by virtue of paragraph (b) has passed,
  - (d) specifying the arrangements a local authority may make when a person in respect of whom the authority provides, or has a power or a duty to provide, an adoption service moves outwith the authority's area,
  - (e) specifying the persons with whom such arrangements may be made,
  - (f) assessing the needs for adoption support services of persons who have moved or who intend to move—
    - (i) from one local authority area to another,
    - (ii) from outwith Scotland to Scotland.
- (2) The power conferred by subsection (1) may be exercised so as to make different provision for different adoption services.

#### Commencement Information

- I19** S. 13 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.
- I20** S. 13 in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## CHAPTER 2

### THE ADOPTION PROCESS

#### Modifications etc. (not altering text)

- C2** Pt. 1 Ch. 2 applied in part (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), 9(1)

#### *Preliminary*

### 14 Considerations applying to the exercise of powers

- (1) Subsections (2) to (4) apply where a court or adoption agency is coming to a decision relating to the adoption of a child.
- (2) The court or adoption agency must have regard to all the circumstances of the case.
- (3) The court or adoption agency is to regard the need to safeguard and promote the welfare of the child throughout the child's life as the paramount consideration.
- (4) The court or adoption agency must, so far as is reasonably practicable, have regard in particular to—
  - (a) the value of a stable family unit in the child's development,
  - (b) the child's ascertainable views regarding the decision (taking account of the child's age and maturity),
  - (c) the child's religious persuasion, racial origin and cultural and linguistic background, and

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- (d) the likely effect on the child, throughout the child's life, of the making of an adoption order.
- (5) Where an adoption agency is placing a child for adoption it must have regard, so far as is reasonably practicable, to the views of the parents, guardians and other relatives of the child.
- (6) In carrying out the duties imposed on it by subsections (2) to (4) an adoption agency must, before making any arrangements for the adoption of a child, consider whether adoption is likely best to meet the needs of the child or whether there is some better practical alternative for the child.
- (7) If an adoption agency concludes that there is an alternative such as is mentioned in subsection (6), it must not make arrangements for the adoption of the child.
- (8) Without prejudice to the generality of subsection (4)(b), 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 that subsection.

**Modifications etc. (not altering text)**

**C3** S. 14(1) modified (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009](#) (S.S.I. 2009/182), regs. 1(1), **9(3)**

**Commencement Information**

**I21** S. 14 in force at 28.9.2009 by [S.S.I. 2009/267](#), arts. **1(2)**, 2 (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

*Pre-adoption requirements*

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

- (1) Where—
  - (a) subsection (2) applies, an adoption order may not be made in relation to a child unless the conditions in subsection (3) are met,
  - (b) subsection (2) does not apply, an adoption order may not be made in relation to the child unless the condition in subsection (4) is met.
- (2) This subsection applies if—
  - (a) the person applying for the adoption order (the “applicant”), or one of the applicants, is a parent, step-parent or relative of the child, or
  - (b) the child was placed with the applicant, or applicants, by an adoption agency.
- (3) The conditions are—
  - (a) that the child is at least 19 weeks old, and
  - (b) that at all times during the period of 13 weeks immediately preceding the making of the order the child's home was with the applicants.
- (4) The condition is that at all times during the period of 12 months immediately preceding the making of the order the child's home was with the applicants.
- (5) In relation to—
  - (a) an adoption proposed to be effected by a Convention adoption order, or

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- (b) an adoption of a child habitually resident outwith the British Islands which is proposed to be effected by an adoption order other than a Convention adoption order,

subsection (3)(b) has effect as if the reference to a period of 13 weeks were a reference to a period of 6 months.

**Modifications etc. (not altering text)**

- C4** S. 15 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(4)(a)**

**Commencement Information**

- I22** S. 15 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

**16 Home visits**

- (1) Where a child was placed for adoption with the applicants by an adoption agency, an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (2) is met.
- (2) The condition is that sufficient opportunities to see the child with the applicant or, in the case of an application by two applicants, both of them together in the home environment have been given to the agency.
- (3) Where the child was not placed for adoption with the applicants by an adoption agency, an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (4) is met.
- (4) The condition is that sufficient opportunities to see the child with the applicant or, in the case of an application by two applicants, both of them together in the home environment have been given—
- (a) where the home is in Scotland, to the local authority within whose area the home is situated,
- (b) where the home is outwith Scotland, to any local authority.

**Commencement Information**

- I23** S. 16 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

**17 Reports where child placed by agency**

- (1) Subsection (2) applies where an application for an adoption order relates to a child placed for adoption by an adoption agency.
- (2) The agency must—
- (a) submit to the court a report on—
- (i) the suitability of the applicants, and
- (ii) any other matters relevant to the operation of section 14, and
- (b) assist the court in any manner the court directs.

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#### Commencement Information

**I24** S. 17 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### 18 Notification to local authority of adoption application

- (1) Subsection (2) applies where a child was not placed for adoption with the applicants by an adoption agency.
- (2) An adoption order may not be made in relation to the child unless the applicants have, at least 3 months before the date of the order, given notice to the appropriate local authority of their intention to apply for the order.
- (3) In subsection (2), “appropriate local authority” means—
  - (a) where the applicants have their home in Scotland, the local authority within whose area the home is situated,
  - (b) where they have their home outwith Scotland, any local authority.

#### Commencement Information

**I25** S. 18 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### 19 Notice under section 18: local authority's duties

- (1) This section applies where a local authority receives a notice under section 18 in respect of a child.
- (2) On receipt of the notice the authority must—
  - (a) investigate the matter, and
  - (b) submit to the court a report of the investigation.
- (3) The local authority must in particular investigate—
  - (a) so far as is reasonably practicable, the suitability of the applicants and any other matters relevant to the operation of section 14 in relation to the application,
  - (b) whether there has been a contravention of section 75 in relation to the child, and
  - (c) whether there has been a failure to comply with section 76(2) in relation to the child.
- (4) If the authority knows that the child is being looked after by another local authority, it must, before the expiry of the period of 7 days beginning with the day on which it receives the notice, give the other authority a copy of the notice.

#### Commencement Information

**I26** S. 19 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Restrictions on removal of children placed for adoption*

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

- (1) Subsection (2) applies where—
  - (a) an adoption agency has placed a child for adoption with persons (“prospective adopters”), and
  - (b) each parent or guardian of the child has, in accordance with such provision as may be made by regulations by the Scottish Ministers, consented to the placement (whether or not each parent or guardian knows the identity of the prospective adopters).
- (2) A parent or guardian of the child must not remove the child from the care of the prospective adopters without the leave of—
  - (a) the adoption agency, or
  - (b) the appropriate court.
- (3) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

#### **Commencement Information**

- I27** S. 20(1) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.
- I28** S. 20(1) in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- I29** S. 20(2)(3) in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

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

- (1) Subsection (2) applies where—
  - (a) persons (“prospective adopters”) give notice under section 18(2) in relation to a child, and
  - (b) during the period of 5 years immediately preceding the giving of notice, the child’s home has been with the prospective adopters.
- (2) Except where subsection (3) applies, a person may not remove the child from the care of the prospective adopters during the period beginning with the giving of notice and ending with the relevant act.
- (3) This subsection applies if—
  - (a) the prospective adopters consent to the removal,
  - (b) a court having jurisdiction to make adoption orders grants leave for the removal,
  - (c) the child is arrested, or
  - (d) the removal is authorised by virtue of any enactment.
- (4) For the purposes of subsection (2), “relevant act” means—

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) where before the expiry of the 3 month period the prospective adopters apply for an adoption order in relation to the child to whom the notice relates, the making of the application for the adoption order,
  - (b) where the prospective adopters do not apply for an adoption order before the expiry of that period, the expiry of that period.
- (5) In this section, “3 month period” means the period of 3 months beginning with the day on which the local authority receives the notice.
- (6) If during—
- (a) the 3 month period, or
  - (b) the period of 28 days beginning with the expiry of the 3 month period,
- the prospective adopters give a further notice under section 18(2) to a local authority in respect of the same child, subsection (2) does not apply.
- (7) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

#### **Modifications etc. (not altering text)**

- C5** S. 21 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(4)(b)**
- C6** S. 21(6) excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **6(2)**

#### **Commencement Information**

- I30** S. 21 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with **arts. 3-21**) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## **22 Restrictions on removal: application for adoption order pending**

- (1) Subsection (2) applies where—
- (a) an application for an adoption order in relation to a child has been made to, but not determined by, the appropriate court, and
  - (b) during the period of 5 years immediately preceding the making of the application, the child's home has been with the persons applying for the order (the “prospective adopters”).
- (2) Except where subsection (3) applies, a person may not remove the child from the care of the prospective adopters.
- (3) This subsection applies if—
- (a) the prospective adopters consent to the removal,
  - (b) the court determining the application grants leave for the removal,
  - (c) the child is arrested, or
  - (d) the removal is authorised by virtue of any enactment.
- (4) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Modifications etc. (not altering text)**

**C7** S. 22 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(4)(c)**

**Commencement Information**

**I31** S. 22 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

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

- (1) Subsection (2) applies where—
  - (a) section 21(1) or 22(1) applies,
  - (b) before the child's home came to be with the prospective adopters, the child was looked after by a local authority, and
  - (c) the child continues to be looked after by a local authority.
- (2) Except where subsection (3) applies, the local authority must not remove the child from the care of the prospective adopters.
- (3) This subsection applies if—
  - (a) the removal is made in accordance with section 25 or 26,
  - (b) an appropriate court grants leave for the removal, or
  - (c) the removal is authorised by virtue of Chapter 2 or 3 of Part II of the 1995 Act.

**Commencement Information**

**I32** S. 23 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

*Return of children*

**24 Return of child removed in breach of certain provisions**

- (1) The relevant court may, on the application of a person from whose care a child has been removed in breach of any of the relevant provisions, order the person who has so removed the child to return the child to the applicant.
- (2) The relevant court may, on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's care in breach of any of the relevant provisions, by order direct that other person not to remove the child from the applicant's care in breach of the provision concerned.
- (3) The “relevant court” is—
  - (a) if there is pending in respect of the child an application for an adoption order or a permanence order, the court in which the application is pending,
  - (b) in any other case—
    - (i) the Court of Session, or
    - (ii) the sheriff court of the sheriffdom within which the applicant resides.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The relevant provisions are—
- (a) sections 20, 21, 22 and 23,
  - (b) sections 30, 34, 35 and 36 of the 2002 Act,
  - (c) Articles 28 and 29 of the Northern Ireland Order.

**Modifications etc. (not altering text)**

- C8** S. 24 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(4)(d)**

**Commencement Information**

- I33** S. 24 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

**25 Return of child placed for adoption by adoption agency**

- (1) This section applies where—
- (a) in pursuance of arrangements made by an adoption agency or a registered adoption society for the adoption of a child by persons (the “prospective adopters”), the child has been placed with the prospective adopters, and
  - (b) no adoption order has been made in relation to the child on the application of the prospective adopters.
- (2) The prospective adopters may give notice to the agency or society of their intention not to retain the care of the child.
- (3) The agency or society may give notice to the prospective adopters of its intention not to allow the child to remain in the care of the prospective adopters.
- (4) If an application for an adoption order in relation to the child has been made by the prospective adopters, notice under subsection (3) may be given only with leave of the court which is hearing the application.
- (5) Subsection (6) applies where—
- (a) notice is given by virtue of subsection (2) or (3), or
  - (b) an application for an adoption order made by the prospective adopters is refused or withdrawn.
- (6) The prospective adopters must, before the expiry of the relevant period, return the child to—
- (a) the agency or, as the case may be, society, or
  - (b) a person nominated by the agency or, as the case may be, society for the purposes of this section.
- (7) In subsection (6), “relevant period” means—
- (a) in the case mentioned in paragraph (a) of subsection (5), the period of 7 days beginning with the day on which notice was given,
  - (b) in the case mentioned in paragraph (b) of that subsection—
    - (i) the period of 7 days beginning with the day on which the application was refused or withdrawn, or



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- (ii) if, before the expiry of the period mentioned in sub-paragraph (i), the court makes an order extending that period for a period (not exceeding 6 weeks) specified in the order, the period so specified.
- (8) A person who fails to return a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- (9) The court by which a person is convicted by virtue of subsection (8) may order that the child in respect of whom the offence is committed be returned to the child's parent or guardian or, as the case may be, the adoption agency or registered adoption society.

**Modifications etc. (not altering text)**

- C9** S. 25 applied (with modifications) (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **6(3)**
- C10** S. 25 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(4)(e)**

**Commencement Information**

- I34** S. 25 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

*Adoption not proceeding: arrangements*

**26 Looked after children: adoption not proceeding**

- (1) This section applies where—
- persons (“prospective adopters”) give notice under section 18(2) in relation to a child,
  - the child has a home with the prospective adopters,
  - the child was not placed with the prospective adopters in pursuance of arrangements made by an adoption agency or a registered adoption society for the adoption of the child by the prospective adopters, and
  - the child is being looked after by a local authority (the “relevant local authority”).
- (2) The prospective adopters may give notice to the relevant local authority of their intention not to retain the care of the child.
- (3) The authority may give notice to the prospective adopters of its intention not to allow the child to remain in the care of the prospective adopters.
- (4) Where notice is given by virtue of subsection (2) or (3) the prospective adopters must, before the expiry of the period of 7 days beginning with the day on which notice is given, deliver the child to—
- the authority, or
  - a person nominated by the authority for the purposes of this section.
- (5) If an application for an adoption order in relation to the child has been made by the prospective adopters, notice under subsection (3) may be given only with leave of the court which is hearing the application.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) If an application for an adoption order in relation to the child is refused or withdrawn, the child—
- (a) must be delivered to the relevant local authority only if the authority requires it, and
  - (b) where such a requirement is made, must be delivered before the expiry of the period of 7 days beginning with the day on which the requirement is made.
- (7) Where an application by the prospective adopters for an adoption order in relation to the child has been made but not disposed of, any right of the relevant local authority to require the child to be delivered otherwise than by virtue of this section is suspended.
- (8) A person who fails to deliver a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- (9) The court by which a person is convicted by virtue of subsection (8) may order that the child in respect of whom the offence is committed be delivered to the child's parent or guardian or, as the case may be, the relevant local authority.
- (10) In this section “registered adoption society” has the meaning given by section 2(2) of the 2002 Act.

**Modifications etc. (not altering text)**

**C11** S. 26 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(4)(f)**

**Commencement Information**

**I35** S. 26 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

*Contravention of sections 30 to 36 of 2002 Act*

**27 Contravention of sections 30 to 36 of 2002 Act**

- (1) A person who contravenes any of the provisions of the 2002 Act mentioned in subsection (2) commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- (2) Those provisions are—
- (a) section 30(1), (2) and (3) (removal of child placed or who may be placed for adoption),
  - (b) sections 32(2)(b), 33(2) and 35(2) (return of child by prospective adopters),
  - (c) section 34(1) (removal of child in contravention of placement order),
  - (d) section 36(1) (removal of child in non-agency case), and
  - (e) section 36(5) (return of child to parent or guardian).

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I36** S. 27 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

### *The making of adoption orders*

## 28 Adoption orders

- (1) An adoption order is an order made by the appropriate court on an application under section 29 or 30 vesting the parental responsibilities and parental rights in relation to a child in the adopters or adopter.
- (2) The court must not make an adoption order unless it considers that it would be better for the child that the order be made than not.
- (3) An adoption order may contain such terms and conditions as the court thinks fit.
- (4) An adoption order may be made in respect of a person aged 18 or over if the application for the order was made when the person was under 18.
- (5) An adoption order may be made in respect of a child who is subject to a permanence order.
- (6) An adoption order may be made even if the child to be adopted is already an adopted child.
- (7) An adoption order may not be made in respect of a person who is or has been—
  - (a) married, or
  - (b) a civil partner.

#### Modifications etc. (not altering text)

**C12** S. 28 applied (with modifications) (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), [9\(2\)\(a\)](#)

#### Commencement Information

**I37** S. 28 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

## 29 Adoption by certain couples

- (1) Where—
  - (a) each member of a relevant couple is aged 21 or over,
  - (b) neither member of the couple is a parent of the child to be adopted, and
  - (c) one of the conditions in subsection (2) is met,an adoption order may be made on the application of the couple.
- (2) Those conditions are—
  - (a) that a member of the couple is domiciled in a part of the British Islands,

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- (b) that each member of the couple has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application.
- (3) A couple is “relevant” for the purposes of this section if its members are—
- (a) persons who are married to each other,
  - (b) persons who are civil partners of each other,
  - (c) persons who are living together as if husband and wife in an enduring family relationship, or
  - (d) persons who are living together as if civil partners in an enduring family relationship.
- (4) In this section “parent”, in relation to the child to be adopted, means a parent who has any parental responsibilities or parental rights in relation to the child.

**Modifications etc. (not altering text)**

**C13** S. 29 applied (with modifications) (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(2)(b)**

**Commencement Information**

**I38** S. 29 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

**30 Adoption by one person**

- (1) An adoption order may be made on the application of a person (“A”) if—
- (a) A is aged 21 or over,
  - (b) subsection (2), (3), (4) or (5) applies,
  - (c) one of the conditions in subsection (6) is met, and
  - (d) where A is a natural parent of the child to be adopted, subsection (7) applies.
- (2) This subsection applies if A is not a member of a relevant couple.
- (3) This subsection applies if—
- (a) A and another person (“B”) are a relevant couple,
  - (b) B is aged 18 or over,
  - (c) B is a parent of the child to be adopted, and
  - (d) B—
    - (i) is domiciled in a part of the British Islands, or
    - (ii) has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application.
- (4) This subsection applies if—
- (a) A and B are—
    - (i) married to each other, or
    - (ii) civil partners of each other,
  - (b) B is not a parent of the child to be adopted, and
  - (c) the court is satisfied that—
    - (i) B cannot be found,

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- (ii) A and B have separated and are living apart and the separation is likely to be permanent, or
  - (iii) B is by reason of ill-health (whether physical or mental) incapable of making an application for an adoption order.
- (5) This subsection applies if—
- (a) A and B are a relevant couple by virtue of being members of a couple falling within paragraph (c) or (d) of subsection (3) of section 29,
  - (b) B is not a parent of the child to be adopted, and
  - (c) the court is satisfied that B is by reason of ill-health (whether physical or mental) incapable of making an application for an adoption order.
- (6) Those conditions are—
- (a) that A is domiciled in a part of the British Islands,
  - (b) that A has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application.
- (7) This subsection applies if the court is satisfied that—
- (a) the other natural parent is dead,
  - (b) the other natural parent cannot be found,
  - [<sup>F1</sup>(c) by virtue of the provisions specified in subsection (7A), there is no other parent, or]
  - (d) the exclusion of the other natural parent from the application for adoption is justified on some other ground.
- [<sup>F2</sup>(7A) The provisions referred to in subsection (7)(c) are—
- (a) section 28 of the Human Fertilisation and Embryology Act 1990 (disregarding subsections (5A) to (5I) of that section), or
  - (b) sections 34 to 47 of the Human Fertilisation and Embryology Act 2008 (disregarding sections 39, 40 and 46 of that Act).]
- (8) In subsections (3)(c), (4)(b) and (5)(b), “parent” has the meaning given by section 29(4).

#### Textual Amendments

- F1** S. 30(7)(c) substituted (6.4.2009 for specified purposes, 1.9.2009 in so far as not already in force) by [Human Fertilisation and Embryology Act 2008 \(c. 22\), s. 68\(2\), Sch. 6 para. 56\(2\)](#); S.I. 2009/479, art. 6(1)(e)(2) (with art. 7, Sch.)
- F2** S. 30(7A) inserted (6.4.2009 for specified purposes, 1.9.2009 in so far as not already in force) by [Human Fertilisation and Embryology Act 2008 \(c. 22\), s. 68\(2\), Sch. 6 para. 56\(3\)](#); S.I. 2009/479, art. 6(1)(e)(2) (with art. 7, Sch.)

#### Modifications etc. (not altering text)

- C14** S. 30 applied (with modifications) (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\), regs. 1\(1\), 9\(2\)\(c\)](#)

#### Commencement Information

- I39** S. 30 in force at 28.9.2009 by [S.S.I. 2009/267, arts. 1\(2\), 2](#) (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

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### **31 Parental etc. consent**

- (1) An adoption order may not be made unless one of the five conditions is met.
- (2) The first condition is that, in the case of each parent or guardian of the child, the appropriate court is satisfied—
  - (a) that the parent or guardian understands what the effect of making an adoption order would be and consents to the making of the order (whether or not the parent or guardian knows the identity of the persons applying for the order), or
  - (b) that the parent's or guardian's consent to the making of the adoption order should be dispensed with on one of the grounds mentioned in subsection (3).
- (3) Those grounds are—
  - (a) that the parent or guardian is dead,
  - (b) that the parent or guardian cannot be found or is incapable of giving consent,
  - (c) that subsection (4) or (5) applies,
  - (d) that, where neither of those subsections applies, the welfare of the child otherwise requires the consent to be dispensed with.
- (4) This subsection applies if the parent or guardian—
  - (a) 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,
  - (b) is, in the opinion of the court, unable satisfactorily to—
    - (i) discharge those responsibilities, or
    - (ii) exercise those rights, and
  - (c) is likely to continue to be unable to do so.
- (5) This subsection applies if—
  - (a) the parent or guardian has, by virtue of the making of a relevant order, no parental responsibilities or parental rights in relation to the child, and
  - (b) it is unlikely that such responsibilities will be imposed on, or such rights given to, the parent or guardian.
- (6) In subsection (5)(a), “relevant order” means a permanence order which does not include provision granting authority for the child to whom the order relates to be adopted.
- (7) The second condition is that a permanence order granting authority for the child to be adopted is in force.
- (8) The third condition is that each parent or guardian of the child has consented under section 20 of the 2002 Act (advance consent to adoption), has not withdrawn the consent and does not oppose the making of the adoption order.
- (9) The fourth condition is that—
  - (a) the child has been placed for adoption by an adoption agency (within the meaning of section 2(1) of the 2002 Act) with the prospective adopters in whose favour the adoption order is proposed to be made,
  - (b) the child was placed for adoption—
    - (i) under section 19 of the 2002 Act (placing children with parental consent) with the consent of each parent or guardian and the consent of the mother was given when the child was at least 6 weeks old, or

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- (ii) under an order made under section 21 of the 2002 Act (placement orders) and the child was at least 6 weeks old when the order was made, and
  - (c) no parent or guardian of the child opposes the making of the adoption order.
- (10) The fifth condition is that an order under Article 17(1) or 18(1) of the Northern Ireland Order (orders declaring children free for adoption) is in force in relation to the child.
- (11) Consent is ineffective for the purposes of subsection (2)(a) if given by the mother less than 6 weeks after the child's birth.
- (12) A parent or guardian may not oppose the making of an adoption order under subsection (8) or (9) without leave of the court.
- (13) The court must not give leave under subsection (12) unless satisfied that there has been a change of circumstances since the consent of the parent or guardian was given or, as the case may be, the order under section 21 of the 2002 Act was made.
- (14) The withdrawal of—
- (a) any consent to the placement of a child for adoption under section 19, or under an order under section 21, of the 2002 Act, or
  - (b) any consent given under section 20 of that Act,
- is ineffective if the consent is given after an application for an adoption order is made.
- (15) In subsections (2) and (3), “parent”, in relation to the child to be adopted, means—
- (a) a parent who has any parental responsibilities or parental rights in relation to the child, or
  - (b) a parent who, by virtue of a permanence order which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

#### Commencement Information

**I40** S. 31 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## 32 Consent of child aged 12 or over

- (1) Except where subsection (2) applies, an adoption order may not be made in respect of a child who is aged 12 or over unless the child consents.
- (2) This subsection applies where the court is satisfied that the child is incapable of consenting to the order.

#### Commencement Information

**I41** S. 32 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

*Status: Point in time view as at 28/09/2009.*

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### 33 Restrictions on making orders

- (1) Except where subsection (2) applies, the court may not hear an application for an adoption order in relation to a child where a previous application falling within subsection (3) made in relation to the child by the same persons was refused by any court.
- (2) This subsection applies where—
  - (a) in refusing the previous application, the court directed that this section should not apply, or
  - (b) it appears to the court that, because of a change in circumstances, or for any other reason, it is proper to hear the application.
- (3) An application falls within this subsection if it is an application for—
  - (a) an adoption order,
  - (b) an adoption order as defined in section 46(1) of the 2002 Act,
  - (c) an order made, or having effect as if made, under Article 12 of the Northern Ireland Order,
  - (d) an order for adoption made in the Isle of Man,
  - (e) an order for adoption made in any of the Channel Islands.

#### Commencement Information

**I42** S. 33 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

### 34 Contravention of section 72 no bar to making order

The court may make an adoption order in relation to a child even where it is found that the applicants have, as respects the child, contravened section 72.

#### Modifications etc. (not altering text)

**C15** S. 34 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), [9\(4\)\(g\)](#)

#### Commencement Information

**I43** S. 34 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

*Effect of order on existing rights etc.*

### 35 Effect of order on existing rights etc.

- (1) Where an adoption order is made on the application of a member of a relevant couple by virtue of subsection (3) of section 30, the making of the order—
  - (a) does not affect any parental responsibilities and parental rights which immediately before the making of the order were vested in the other member of the relevant couple,
  - (b) does not extinguish any duty owed to the child by that other member—



*Status: Point in time view as at 28/09/2009.*

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- (i) to pay or provide aliment in respect of any period occurring after the making of the order,
  - (ii) to make any payment arising out of parental responsibilities and parental rights in respect of such a period.
- (2) Otherwise, the making of an adoption order—
  - (a) extinguishes any parental responsibilities and parental rights relating to the child which immediately before the making of the order were vested in any person,
  - (b) subject to subsection (3), extinguishes any duty owed to the child immediately before the making of the order—
    - (i) to pay or provide aliment in respect of any period occurring after the making of the order,
    - (ii) to make any payment arising out of parental responsibilities and parental rights in respect of such a period.
- (3) The making of an adoption order does not extinguish a duty arising under a deed or agreement—
  - (a) which constitutes a trust, or
  - (b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.
- (4) An adoption order does not affect parental responsibilities and parental rights so far as they relate to any period before the making of the order.

#### Commencement Information

**I44** S. 35 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

### *Revocation of supervision requirement*

## **36 Revocation of supervision requirement**

- (1) Subsection (2) applies where—
  - (a) the child to be adopted is subject to a supervision requirement, and
  - (b) the appropriate court is satisfied that, were it to make an adoption order in relation to the child, compulsory measures of supervision in respect of the child would no longer be necessary.
- (2) The court must make an order providing that, on the making of the adoption order, the supervision requirement ceases to have effect.

#### Commencement Information

**I45** S. 36 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

*Status: Point in time view as at 28/09/2009.*

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## Adoption records

### 37 Information to be kept about adoptions

The Scottish Ministers may make regulations for or in connection with specifying—

- (a) the information which an adoption agency must keep in relation to adoptions, and
- (b) the form and manner in which it must keep the information.

#### Commencement Information

- I46** S. 37 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.
- I47** S. 37 in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### 38 Disclosure of information kept under relevant enactment

- (1) The Scottish Ministers may by regulations make provision for or in connection with the disclosure by adoption agencies to adopted persons and other persons of a description or descriptions specified in the regulations of information kept by virtue of a relevant enactment.
- (2) Regulations under subsection (1) may in particular include provision—
  - (a) in circumstances specified in the regulations, conferring discretion on adoption agencies as to whether to disclose or withhold information,
  - (b) specifying conditions which are to apply in relation to the disclosure of information, or information of a type so specified, to adopted persons of a description or descriptions so specified,
  - (c) specifying circumstances in which information should not be disclosed to adopted persons of a description or descriptions so specified,
  - (d) about the review of decisions of adoption agencies in connection with—
    - (i) the disclosure of information,
    - (ii) the conditions applicable to such disclosure.
- (3) In this section, “relevant enactment” means—
  - (a) section 37, or
  - (b) any other enactment (whether or not in force) which imposes a requirement (however expressed) to keep records relating to adoptions.

#### Commencement Information

- I48** S. 38 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.
- I49** S. 38 in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

*Status: Point in time view as at 28/09/2009.*

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## CHAPTER 3

### STATUS OF ADOPTED CHILDREN

#### 39 Meaning of “adoption” in Chapter 3

- (1) In this Chapter, “adoption” means—
  - (a) adoption by an adoption order,
  - (b) adoption by an adoption order as defined in section 46(1) of the 2002 Act,
  - (c) adoption by an order made, or having effect as if made, under Article 12 of the Northern Ireland Order,
  - (d) adoption by an order made in the Isle of Man or any of the Channel Islands,
  - (e) a Convention adoption,
  - (f) an overseas adoption, or
  - (g) an adoption recognised by the law of Scotland and effected under the law of any other country;and related expressions are to be interpreted accordingly.
- (2) References in this Chapter to adoption do not include an adoption effected before the day on which this Chapter comes into force.
- (3) Any reference in an enactment to an adopted person within the meaning of this Chapter includes a reference to an adopted child within the meaning of Part IV of the Adoption (Scotland) Act 1978 (c. 28).

#### Commencement Information

**I50** S. 39 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

#### 40 Status conferred by adoption

- (1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.
- (2) If an adopted person is adopted—
  - (a) by a relevant couple, or
  - (b) by virtue of section 30(3), by a member of a relevant couple,the adopted person is to be treated as the child of the couple concerned.
- (3) An adopted person adopted by virtue of section 30(3) by a member of a relevant couple is to be treated in law as not being the child of any person other than the adopter and the other member of the couple.
- (4) Otherwise, an adopted person is to be treated in law as not being the child of any person other than the adopters or adopter.
- (5) Subsections (3) and (4) do not affect any reference in this Act to a person's natural parent or to any other natural relationship.
- (6) Subsection (7) applies where, in the case of a person adopted under a Convention adoption, the Court of Session is satisfied, on an application under this section—

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- (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption,
  - (b) that—
    - (i) the consents mentioned in Article 4(c) and (d) of the Convention have not been given for a full adoption, or
    - (ii) the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention), and
  - (c) that it would be more favourable to the person for a direction to be given under that subsection.
- (7) The court may direct that subsection (4)—
- (a) is not to apply, or
  - (b) is not to apply to such extent as may be specified in the direction.
- (8) In subsection (6), “full adoption” means an adoption by virtue of which the person falls to be treated in law as if the person were not the child of any person other than the adopters or adopter.
- (9) This section has effect from the date of the adoption.
- (10) Subject to the provisions of this Chapter, this section—
- (a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption and so applies subject to any contrary indication, and
  - (b) has effect as respects things done, or events occurring, on or after the adoption.

#### Commencement Information

**I51** S. 40 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

## 41 Miscellaneous enactments

- (1) Subject to subsection (2), section 40 does not apply—
- (a) for the purposes of determining the forbidden degrees of consanguinity and affinity in respect of the law relating to marriage or to the eligibility of persons to register as civil partners of each other, or
  - (b) in respect of the crime of incest.
- (2) On the making of an adoption order, the adopter and the person adopted are deemed, for all time coming, to be within the forbidden degrees in respect of the law relating to marriage, to such eligibility and to incest.
- (3) Section 40 does not apply for the purposes of any provision of—
- (a) the British Nationality Act 1981 (c. 61),
  - (b) the Immigration Act 1971 (c. 77),
  - (c) any instrument having effect under either of those Acts, or
  - (d) any other law for the time being in force which determines British citizenship, British overseas territories citizenship or British Overseas Citizenship.

*Status: Point in time view as at 28/09/2009.*

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#### Commencement Information

**I52** S. 41 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

### 42 Pensions

Section 40 does not affect entitlement to a pension which is payable to or for the benefit of a person and is in payment at the time of the person's adoption.

#### Commencement Information

**I53** S. 42 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

### 43 Insurance

- (1) Subsections (2) and (3) apply where a child is adopted whose natural parent has effected an insurance with—
  - (a) a friendly society,
  - (b) a collecting society, or
  - (c) an industrial insurance company,for the payment on the death of the child of money for funeral expenses.
- (2) The rights and liabilities under the policy are by virtue of the adoption transferred to the adoptive parents.
- (3) For the purposes of the enactments relating to such societies and companies, the adoptive parents are to be treated as the person who took out the policy.
- (4) Where the adoption is effected by an order made by virtue of section 30(3), the references in subsections (2) and (3) to the adoptive parents are to be read as references to the adopter and the other member of the relevant couple.

#### Commencement Information

**I54** S. 43 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

### 44 Succession and inter vivos deeds

Section 40 does not affect the law relating to adopted persons in respect of—

- (a) succession to an intestate or testate estate, and
- (b) the disposal of property by virtue of an *inter vivos* deed.

*Status: Point in time view as at 28/09/2009.*

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#### Commencement Information

**I55** S. 44 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## CHAPTER 4

### ADOPTION SUPPORT PLANS

#### *Adoption support plans*

#### 45 Adoption support plans

- (1) This section applies where—
  - (a) a local authority has, by virtue of section 9(1), assessed the needs of a person for adoption support services and decides that the provision of such services is called for in respect of the person, and
  - (b) the person is a member of a relevant family.
- (2) Subject to subsection (4), the authority must prepare an adoption support plan in respect of each member of the relevant family.
- (3) An adoption support plan must, in relation to the person it concerns (“the person”)—
  - (a) specify the needs of the person identified as a result of an assessment carried out by virtue of section 9(1),
  - (b) record details of the adoption support services the provision of which the authority decides is called for by virtue of section 9(2),
  - (c) specify any other needs of the person identified by the authority,
  - (d) set out how the needs mentioned in paragraphs (a) and (c) may be met by the provision of adoption support services,
  - (e) record details of any previous assessment of needs in respect of the person carried out by virtue of section 9(1),
  - (f) record details of any assessment of needs in respect of the person made under section 12A(1) of the Social Work (Scotland) Act 1968 (c. 49),
  - (g) where the person has been adopted, record details of any care plan prepared by a local authority in respect of the person under regulations made under section 17 of the 1995 Act,
  - (h) record details of any adoption support services which—
    - (i) were provided to the person before the plan was prepared, or
    - (ii) are being provided to the person when the plan is prepared,
  - (i) specify any other matter which, in the opinion of the local authority preparing the plan, is relevant to the provision of adoption support services to the person, and
  - (j) where there is no information to be included in the plan under any of paragraphs (a) to (i), record that fact.
- (4) The authority may, with the consent of each member of the relevant family aged 12 or over, prepare a single adoption support plan in respect of all members of the relevant family instead of preparing adoption support plans in respect of each of them.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Subsection (3) applies to a single adoption support plan prepared under subsection (4) as if—
- (a) for the words “the person it concerns (“the person”)” there were substituted “each member of the relevant family it concerns”,
  - (b) for the words “the person” in paragraphs (a), (c), (e), (f), (h) and (i) there were substituted “each member”,
  - (c) for the words “the person” in paragraph (g), where they first occur, there were substituted “a member of the relevant family”, and
  - (d) for the words “the person” in that paragraph, where they second occur, there were substituted “that member”.
- (6) If in the opinion of the authority a member of the relevant family aged 12 or over is incapable of giving consent under subsection (4), the requirement to obtain such consent does not apply in relation to the member.
- (7) In this section, “relevant family” means—
- (a) a child who is placed for adoption,
  - (b) the person or persons with whom a child is placed for adoption,
  - (c) a child who has been adopted,
  - (d) the person who has, or persons who have, adopted that child,
  - (e) any—
    - (i) child of a person or persons mentioned in paragraph (b) or (d),
    - (ii) other child who has been treated by the person or persons as a child of the person or persons,living in the same household as the person or persons.

#### **Commencement Information**

**I56** S. 45 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## **46 Duration**

- (1) An adoption support plan ceases to have effect on the occurrence of whichever of the events in subsection (2) first occurs.
- (2) Those events are—
- (a) the preparation of a further adoption support plan in respect of the member or, as the case may be, members of the relevant family in relation to whom the adoption support plan was prepared,
  - (b) the date on which an appropriate child reaches the age of 18.
- (3) In this section, “appropriate child” means a child—
- (a) who has been placed for adoption, or
  - (b) who has been adopted,
- and who is a member of the relevant family in relation to which, or to any members of which, the adoption support plan was prepared.

*Status: Point in time view as at 28/09/2009.*

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#### Commencement Information

**I57** S. 46 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

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

- (1) This section applies where an adoption support plan is in force in respect of a member of a relevant family or, as the case may be, a relevant family.
- (2) Subject to subsection (4), the person to whom the plan relates or, as the case may be, a member of the relevant family to which the plan relates (in either case, the “relevant member”) may, if the relevant member believes the local authority is not complying with any of its obligations mentioned in the plan, require the authority to review the plan.
- (3) The authority may, in reviewing the plan, carry out a reassessment of the needs of the relevant member for adoption support services.
- (4) A relevant member (other than the person or persons with whom the child has been placed for adoption or the person who has, or persons who have, adopted the child) may not make a requirement under subsection (2) unless, in the opinion of the local authority, the member is capable of understanding the need for adoption support services.
- (5) After reviewing the plan, the local authority must vary the plan to reflect any changes in—
  - (a) the needs of any relevant member for adoption support services identified as a result of a reassessment of needs made under subsection (3),
  - (b) the adoption support services the local authority will provide.
- (6) In this section, any references to a reassessment of needs of a person include, where no assessment has been carried out by virtue of section 9(1)(a) in relation to the person, references to an assessment of needs of the person.

#### Commencement Information

**I58** S. 47 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### 48 Other cases where authority under duty to review plan

- (1) This section applies where an adoption support plan is in force.
- (2) The local authority must review the plan—
  - (a) from time to time, and
  - (b) at any time when the authority becomes aware of a change in the circumstances of a relevant member.
- (3) In reviewing the plan, the authority may make a reassessment of the needs of any relevant member.



*Status: Point in time view as at 28/09/2009.*

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- (4) After reviewing the plan, the authority must vary the plan to reflect any changes in—
  - (a) the needs of any relevant member for adoption support services identified as a result of a reassessment of needs made under subsection (3),
  - (b) the adoption support services the local authority will provide.
- (5) In this section—
  - (a) any references to a reassessment of needs of a person are to be construed in accordance with subsection (6) of section 47,
  - (b) “relevant member” has the same meaning as in that section.

#### **Commencement Information**

**I59** S. 48 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### *Reassessment*

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

- (1) This section applies where an adoption support plan is in force.
- (2) Any relevant member aged 12 or over may require the local authority which prepared the plan to make a reassessment of the member's needs for adoption support services.
- (3) The authority, having regard to the results of that reassessment, must decide whether the needs of the member call for the provision of such services.
- (4) Where the authority decides, by virtue of subsection (3), that the provision of adoption support services is called for, the authority must provide the services.
- (5) Where the authority provides adoption support services under subsection (4), it must vary the adoption support plan to reflect any changes in the services the authority will provide.
- (6) A relevant member (other than the person or persons with whom the child has been placed for adoption or the person who has, or persons who have, adopted the child) may not require a reassessment to be made under subsection (2) unless, in the opinion of the local authority, the member is capable of understanding the need for adoption support services.
- (7) Where a local authority is making a reassessment of needs under this section, it must—
  - (a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and
  - (b) have regard to such matters as may be so prescribed.
- (8) In this section—
  - (a) any references to a reassessment of needs of a person are to be construed in accordance with subsection (6) of section 47,
  - (b) “relevant member” has the same meaning as in that section.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

- I60** S. 49(1)-(6)(8) in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- I61** S. 49(7) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.
- I62** S. 49(7) in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

#### Directions

### 50 Implementation of plans: directions

- (1) The Scottish Ministers may give directions of a general or specific nature to a local authority as to the implementation of adoption support plans.
- (2) A direction under subsection (1) may not require an authority—
  - (a) to provide or, as the case may be, continue to provide, or
  - (b) withhold provision of, a particular adoption support service.
- (3) The Scottish Ministers may vary or revoke any direction under subsection (1).

#### Commencement Information

- I63** S. 50 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

#### Guidance

### 51 Guidance

- (1) In preparing or reviewing adoption support plans, a local authority must have regard to any guidance issued by the Scottish Ministers.
- (2) The Scottish Ministers may vary or revoke any such guidance.

#### Commencement Information

- I64** S. 51 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

#### Regulations

### 52 Regulations about reviews of adoption support plans

The Scottish Ministers may by regulations make provision for or in connection with specifying the way in which reviews of adoption support plans are to be carried out.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I65** S. 52 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## CHAPTER 5

### REGISTRATION

#### 53 Adopted Children Register and index

- (1) The Registrar General must continue to maintain—
  - (a) a register to be called the Adopted Children Register, and
  - (b) an index of the Adopted Children Register.
- (2) No entries may be made in the Adopted Children Register other than entries—
  - (a) directed to be made in it by adoption orders, or
  - (b) required to be made under schedule 1.
- (3) The provisions of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49) with regard to the correction of errors in entries apply in relation to entries in the Adopted Children Register as they apply in relation to entries in any register of births.
- (4) Schedule 1 (which makes provision about registration of adoptions and the amendment of adoption orders) has effect.

#### Modifications etc. (not altering text)

**C16** Ss. 53-55 applied in part (with modifications) (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009](#) (S.S.I. 2009/182), regs. 1(1), 9(5)

#### Commencement Information

- I66** S. 53(1)-(3) in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- I67** S. 53(4) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, [Sch.](#)
- I68** S. 53(4) in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

#### 54 Searches and extracts

- (1) The terms, conditions and regulations as to payment of fees, form and authentication of documents and otherwise applicable under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49) in respect of—
  - (a) searches in indexes kept by virtue of that Act by the Registrar General, and
  - (b) the supply from the General Register Office of extracts of entries in the registers of births, deaths and marriages,apply in respect of searches in the index of the Adopted Children Register and supplies of extracts of entries in the Adopted Children Register.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Where a person makes a request in accordance with those terms, conditions and regulations (including paying such fee as may be prescribed by those regulations), the Registrar General is, if the General Register Office is open for the purpose, to—
- (a) search (or permit the person to search) the index of the Adopted Children Register, and
  - (b) issue to the person an extract of an entry in the register.

**Modifications etc. (not altering text)**

**C16** Ss. 53-55 applied in part (with modifications) (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(5)**

**Commencement Information**

**I69** S. 54 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

**55 Connections between the register and birth records**

- (1) The Registrar General must make traceable the connection between any entry in the register of births which, by virtue of paragraph 2(2) of schedule 1 or any enactment at the time in force, has been marked “Adopted” and any corresponding entry in the Adopted Children Register.
- (2) Information kept by the Registrar General for the purposes of subsection (1) is not to be open to public inspection or search.
- (3) The Registrar General may disclose any such information only in accordance with subsection (4).
- (4) Information is disclosed in accordance with this subsection if disclosed—
  - (a) under an order of the Court of Session or a sheriff,
  - (b) to an adopted person who is aged 16 or over and to whom the information relates, or
  - (c) to a local authority, Board, registered adoption society or relevant adoption society which is providing counselling for any such adopted person.
- (5) Where the Registrar General discloses information in accordance with subsection (4) (b), the Registrar must inform the adopted person that counselling services are available for the person—
  - (a) if the person is in Scotland, from any local authority in Scotland,
  - (b) if the person is in England and Wales, from any local authority in England and Wales,
  - (c) if the person is in Northern Ireland, from any Board,
  - (d) if the person is in the United Kingdom and the person's adoption was arranged by—
    - (i) a registered adoption service, from that service,
    - (ii) a registered adoption society, from that society, or
    - (iii) a relevant adoption society, from that society.
- (6) Where—

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) in accordance with subsection (4) information is disclosed to an adopted person who is in Scotland, or
  - (b) such a person applies for information under—
    - (i) Schedule 2 to the 2002 Act, or
    - (ii) Article 54 of the Northern Ireland Order,any body mentioned in subsection (7) from which the adopted person requests counselling must provide counselling for the person.
- (7) Those bodies are—
- (a) any local authority in Scotland,
  - (b) any registered adoption service, or
  - (c) any registered adoption society or relevant adoption society in so far as (by virtue of section 76(2)) that society is acting as an adoption society in Scotland.
- (8) In this section—
- “Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265),
- “local authority”, in relation to England and Wales, means—
- (a) any unitary authority, or
  - (b) any county council so far as it is not a unitary authority,
- “relevant adoption society” means an adoption society registered under Article 4 of the Northern Ireland Order.

#### **Modifications etc. (not altering text)**

**C16** Ss. 53-55 applied in part (with modifications) (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), 9(5)

#### **Commencement Information**

**I70** S. 55 in force at 28.9.2009 by [S.S.I. 2009/267](#), arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

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

- (1) An extract of an entry in the Adopted Children Register issued by virtue of section 54(2)(b) is sufficient evidence of the adoption to which it relates.
- (2) Where an entry in the Adopted Children Register contains a record of—
  - (a) the date of birth, or
  - (b) the country of the birth,of the adopted person, an extract of the entry issued by virtue of that section is sufficient evidence of that date or, as the case may be, country.

#### **Commencement Information**

**I71** S. 56 in force at 28.9.2009 by [S.S.I. 2009/267](#), arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 57 Interpretation of Chapter 5

- (1) In this Chapter, “Registrar General” means the Registrar General of Births, Deaths and Marriages for Scotland.
- (2) Any register, index or record maintained by virtue of section 53 or 55 or schedule 1 may be maintained in any form that the Registrar General considers appropriate.
- (3) References (however expressed) to entries in such a register, or to their amendment, cancellation or marking, are to be read accordingly.

### Commencement Information

**I72** S. 57 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

## CHAPTER 6

### ADOPTIONS WITH A FOREIGN ELEMENT

#### *Restrictions on movement of children*

## 58 Restriction on bringing children into the United Kingdom

- (1) This section applies where a person who is habitually resident in the British Islands (the “British resident”)—
  - (a) brings, or causes another to bring, a child who is habitually resident outwith the British Islands into the United Kingdom for the purpose of adoption by the British resident, or
  - (b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of 12 months ending with that time.
- (2) In subsection (1), the references to adoption, or a child adopted, by the British resident include a reference to adoption, or a child adopted, by the British resident and another person.
- (3) This section does not apply if the child is intended to be adopted under a Convention adoption order.
- (4) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outwith the British Islands, whether or not the adoption is—
  - (a) an adoption within the meaning of Chapter 3, or
  - (b) a full adoption (as defined in section 40(8)).
- (5) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—
  - (a) to apply to an adoption agency in the prescribed manner for an assessment of the person's suitability to adopt the child, and
  - (b) to give the agency any information it may require for the purpose of the assessment.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.
- (7) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may provide for any provision of Chapter 2 to apply with modifications or not to apply.
- (8) Regulations may provide for this section not to apply if—
  - (a) the adopters or, as the case may be, prospective adopters of the child in question are—
    - (i) natural parents,
    - (ii) natural relatives, or
    - (iii) guardians,of the child (or one of them is), or
  - (b) the British resident in question is a step-parent of the child, and any prescribed conditions are met.
- (9) On the occasion of the first exercise of the power to make regulations under subsection (8)—
  - (a) the regulations must not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and
  - (b) accordingly section 117(4) does not apply to the statutory instrument containing the regulations.
- (10) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Scottish Ministers.

#### Commencement Information

- I73** S. 58(1)-(4) (8) (9) in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)
- I74** S. 58(5)-(7) (10) in force at 20.4.2009 for specified purposes by [S.S.I. 2009/147](#), [art. 2](#), [Sch.](#)
- I75** S. 58(5)-(7) (10) in force at 28.9.2009 in so far as not already in force by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

## 59 Preliminary order where child to be adopted abroad

- (1) The appropriate court may, on an application by persons (“the prospective adopters”) who the court is satisfied intend to adopt a child under the law of a country or territory outwith the British Islands, make an order vesting parental responsibilities and parental rights in relation to the child in the prospective adopters.
- (2) If the court is satisfied that the prospective adopters would meet the requirements as to domicile, or habitual residence, in Scotland which they would require to meet if an adoption order were to be made on their application, the court may not make an order under this section.
- (3) An order under this section may not be made unless any requirements prescribed by regulations by the Scottish Ministers are satisfied.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) An application for an order under this section may not be made unless at all times during the period of 10 weeks immediately preceding the application the child's home was with the prospective adopters.
- (5) Section 35 has effect in relation to an order under this section as it has effect in relation to adoption orders.
- (6) The Scottish Ministers may by regulations provide for any provision of this Act which relates to adoption orders to apply, with or without modifications, to orders under this section.

#### Commencement Information

- I76** S. 59(1)(2)(4)(5) in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- I77** S. 59(3)(6) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.
- I78** S. 59(3)(6) in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

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

- (1) A person who takes or sends a protected child out of Great Britain to any place outwith the British Islands with a view to the adoption of the child by any person commits an offence.
- (2) A person who makes or takes part in any arrangements for transferring the care of a protected child to another person, knowing that the other person intends to take or send the child out of Great Britain in circumstances which would constitute an offence under subsection (1), commits an offence.
- (3) No offence is committed under subsection (1) if the child is taken or sent out of Great Britain under the authority of an order under—
  - (a) section 59,
  - (b) section 84 of the 2002 Act, or
  - (c) Article 57 of the Northern Ireland Order.
- (4) A person is deemed to take part in arrangements for transferring the care of a child to another person for the purpose mentioned in subsection (2) if the person—
  - (a) facilitates the placing of the child in the care of the other person,
  - (b) initiates or takes part in negotiations the purpose or effect of which is—
    - (i) the making of such arrangements, or
    - (ii) the conclusion of an agreement to transfer the care of the child, for the purpose mentioned in that subsection, or
  - (c) causes any person to initiate or take part in any such negotiations.
- (5) The Scottish Ministers may by regulations provide for subsections (1) to (3) to apply with modifications, or not to apply, if—
  - (a) the prospective adopters are—
    - (i) parents,
    - (ii) relatives, or
    - (iii) guardians,



*Status: Point in time view as at 28/09/2009.*

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- of the child (or one of them is), or
  - (b) the prospective adopter is a step-parent of the child,  
and any conditions prescribed by the regulations are met.
- (6) On the occasion of the first exercise of the power to make regulations under subsection (5)—
- (a) the regulations must not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and
  - (b) accordingly section 117(4) does not apply to the statutory instrument containing the regulations.
- (7) In any proceedings under this section—
- (a) a report by a British consular officer or a deposition made before, and authenticated under the signature of, such an officer is (if proved that the officer or deponent cannot be found in the United Kingdom) sufficient evidence of the matters stated in the report or deposition, and
  - (b) it is not necessary to prove the signature or official character of the person who bears to have signed the report or deposition.
- (8) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- (9) In subsections (1) and (2), “protected child” means a child who is—
- (a) habitually resident in the United Kingdom, or
  - (b) a Commonwealth citizen.

#### **Commencement Information**

**I79** S. 60 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

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

- (1) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where section 58 applies, the person commits an offence—
- (a) if the person has not complied with any requirement imposed by virtue of subsection (5) of that section, or
  - (b) if the person has not met any condition which the person is required to meet by virtue of subsection (6) of that section,
- before that time, or before any later time which may be prescribed by regulations made by the Scottish Ministers.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both,
  - (b) on conviction on indictment to imprisonment for a term not exceeding 12 months, or a fine or both.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

- I80** S. 61(1) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.
- I81** S. 61(1) in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- I82** S. 61(2) in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### *Adoptions from abroad: special restrictions*

## 62 Declaration of special restrictions on adoptions from abroad

- (1) This section applies if the Scottish Ministers have reason to believe that, because of practices taking place in a country or territory outwith the British Islands (the “relevant country”) in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom in the cases mentioned in subsection (2).
- (2) Those cases are—
  - (a) that a British resident wishes to bring, or cause another to bring, a child who is not a British resident into the United Kingdom for the purpose of adoption by the British resident and, in connection with the proposed adoption, there have been, or would have to be, proceedings in the relevant country or dealings with authorities or agencies there, or
  - (b) that a British resident wishes to bring, or cause another to bring, into the United Kingdom a child adopted by the British resident under an adoption effected, within the period of 12 months ending with the date of the bringing in, under the law of the relevant country.
- (3) The Scottish Ministers may by order declare, in relation to any relevant country, that special restrictions are to apply for the time being in relation to the bringing in of children in the cases mentioned in subsection (2).
- (4) The Scottish Ministers must, as respects each relevant country in relation to which such a declaration has effect for the time being (a “restricted country”), publish reasons for making the declaration in relation to the country.
- (5) The Scottish Ministers must publish a list of restricted countries (“the restricted list”) and keep the list up to date.
- (6) The reasons and the restricted list are to be published in whatever way the Scottish Ministers think appropriate for bringing them to the attention of adoption agencies and members of the public.
- (7) In this section, “British resident” means a person habitually resident in the British Islands.
- (8) Any reference in this section to adoption by a British resident includes adoption by a British resident and another person.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**183** S. 62 in force at 1.9.2008 by S.S.I. 2008/282, art. 2

### 63 Review

- (1) The Scottish Ministers must keep under review, in relation to each restricted country, whether it should continue to be a restricted country.
- (2) If the Scottish Ministers determine, in relation to a restricted country, that there is no longer a reason to believe what is mentioned in subsection (1) of section 62, they must by order revoke the order containing the declaration made in relation to it under subsection (3) of that section.
- (3) In this section, “restricted country” has the same meaning as in section 62.

#### Commencement Information

**184** S. 63 in force at 1.9.2008 by S.S.I. 2008/282, art. 2

### 64 The special restrictions

- (1) The special restrictions mentioned in subsection (3) of section 62 are that the Scottish Ministers are not to take any step which they might otherwise have taken in connection with furthering the bringing of a child into the United Kingdom in the cases mentioned in subsection (2) of that section (whether or not that step is provided for by virtue of any enactment).
- (2) Nothing in subsection (1) prevents the Scottish Ministers from taking those steps if, in any particular case, the prospective adopters or, as the case may be, the adopters satisfy the Scottish Ministers that they should take those steps despite the special restrictions.
- (3) The Scottish Ministers may make regulations providing for—
  - (a) the procedure to be followed by them in determining whether or not they are satisfied as mentioned in subsection (2),
  - (b) matters which they are to take into account when making such a determination (whether or not they also take other matters into account).

#### Commencement Information

**185** S. 64 in force at 1.9.2008 by S.S.I. 2008/282, art. 2

### 65 Imposition of extra conditions in certain cases

- (1) The Scottish Ministers may make regulations providing—
  - (a) for them to specify in the restricted list, in relation to any restricted country, a step which is not otherwise provided for by virtue of any enactment but which, by virtue of the arrangements between the United Kingdom and that country, the Scottish Ministers normally take in connection with the bringing in of a child where that country is concerned, and

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) that, if such a step has been so specified in relation to a restricted country, one or more conditions specified in the regulations are to be met in respect of a child brought into the United Kingdom in either of the cases mentioned in section 62(2) (reading the reference there to the “relevant country” as being to the restricted country in question).
- (2) Those conditions are in addition to any provided for by virtue of—
  - (a) section 58, or
  - (b) any other enactment.
- (3) A person who brings, or causes another to bring, a child into the United Kingdom commits an offence if the person has not met any condition which the person is required to meet by virtue of subsection (1)(b).
- (4) Subsection (3) does not apply if the step specified in the restricted list in relation to any country had already been taken before the publication of the restricted list.
- (5) A person who commits an offence under subsection (3) is liable—
  - (a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both,
  - (b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine or both.
- (6) In this section, “restricted country” and “restricted list” have the same meanings as in section 62.

#### **Commencement Information**

**186** S. 65 in force at 1.9.2008 by S.S.I. 2008/282, art. 2

### *Charging*

#### **66 Power to charge**

- (1) This section applies to adoptions to which—
  - (a) section 58 applies, or
  - (b) regulations made under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c. 18) apply.
- (2) The Scottish Ministers may charge a fee to adopters for services provided or to be provided by them in relation to adoptions to which this section applies.
- (3) The Scottish Ministers may determine the level of fee as they see fit and may, in particular—
  - (a) charge a flat fee or charge different fees in different cases or descriptions of case,
  - (b) in any case or description of case, waive a fee.
- (4) The Scottish Ministers must secure that, taking one financial year with another, the income from fees under this section does not exceed the total cost to them of providing the services in relation to which the fees are imposed.
- (5) In this section, “financial year” means a period of 12 months ending with 31 March.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) Any references in this section—
- (a) to adoptions include prospective adoptions, and
  - (b) to adopters include prospective adopters.

**Commencement Information**

**187** S. 66 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

*Overseas adoptions etc.*

**67 Meaning of “overseas adoption”**

- (1) In this Act, “overseas adoption”—
- (a) means an adoption of a description specified in regulations made by the Scottish Ministers (being a description of adoptions effected under the law of any country or territory outwith the British Islands), but
  - (b) does not include a Convention adoption.
- (2) The Scottish Ministers may by regulations prescribe the requirements that ought to be met by an adoption of any description effected after the coming into force of the regulations for it to be an overseas adoption for the purposes of this Act.
- (3) At any time when regulations under subsection (2) are in force, the Scottish Ministers must exercise their power under subsection (1) so as to secure that adoptions of any description effected after the coming into force of the regulations are not overseas adoptions for the purposes of this Act if they consider that such adoptions are not likely, within a reasonable time, to meet the requirements prescribed under subsection (2).
- (4) Regulations under subsection (1) may contain provision as to the manner in which evidence of any overseas adoption may be given.
- (5) In this section, “adoption” means the adoption of a child or of a person who was a child at the time the adoption was applied for.

**Commencement Information**

**188** S. 67 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

**68 Annulment and recognition**

- (1) The Court of Session may, on an application under this subsection, by order annul a Convention adoption or a Convention adoption order on the ground that the adoption or, as the case may be, order is contrary to public policy.
- (2) The Court of Session may, on an application under this subsection—
- (a) order that an overseas adoption or a determination is to cease to be valid in Great Britain on the ground that the adoption or, as the case may be, determination is contrary to public policy or that the authority which purported

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- to authorise the adoption or make the determination was not competent to entertain the case,
- (b) decide the extent, if any, to which a determination has been affected by a subsequent determination.
- (3) The Court of Session may, in any proceedings in that court, decide that an overseas adoption or a determination is, for the purposes of those proceedings, to be treated as invalid in Great Britain on either of the grounds mentioned in subsection (2)(a).
- (4) An order or decision of the High Court on an application under section 89(2) of the 2002 Act is to be recognised and to have effect as if it were an order or decision of the Court of Session on an application under subsection (2).
- (5) Except as provided by this section, the validity of a Convention adoption, a Convention adoption order, an overseas adoption or a determination is not to be questioned in proceedings in any court in Scotland.
- (6) In this section “determination” means such a determination as is mentioned in section 70.

#### Commencement Information

**I89** S. 68 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## 69 Section 68: supplementary provision

- (1) Any application for—
- an order under section 68, or
  - a decision under subsection (2)(b) of that section,
- is to be made in the manner prescribed in regulations made by the Scottish Ministers and within such period as may be so prescribed.
- (2) No application is to be made under section 68(1) in respect of an adoption 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 there.
- (3) In deciding in pursuance of section 68 whether such an authority as is mentioned in section 70 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.

#### Commencement Information

**I90** S. 69(1) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.

**I91** S. 69(1) in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

**I92** S. 69(2)(3) in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

*Status: Point in time view as at 28/09/2009.*

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## 70 Effect of determinations and orders made outwith Scotland

- (1) Subsection (2) applies where—
- (a) an authority of a Convention country (other than the United Kingdom) having power under the law of that country—
    - (i) to authorise, or review the authorisation of, a Convention adoption, or
    - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order, or
  - (b) an authority of a relevant territory having power under the law of that territory—
    - (i) to authorise, or review the authorisation of, a Convention adoption or an adoption effected in that territory, or
    - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order,
- makes a determination (“the relevant determination”) in the exercise of that power.
- (2) Subject to section 68 and any subsequent determination having effect under this subsection, the relevant determination has effect in Scotland for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination as the case may be.
- (3) In subsection (1), “relevant territory” means—
- (a) any of the Channel Islands,
  - (b) the Isle of Man, or
  - (c) any British overseas territory (within the meaning of the British Nationality Act 1981 (c. 61)).
- (4) Section 35 applies in relation to an order under Article 17 (freeing child for adoption with parental agreement) or 18 (freeing child for adoption without parental agreement) of the Northern Ireland Order as if it were an adoption order.
- (5) Sections 35(2) and (3) and 43 apply in relation to a child who is the subject of an order which—
- (a) is similar to an order under section 59, and
  - (b) is made (whether before or after this Act has effect) in a part of the British Islands,
- as those sections apply in relation to a child who is the subject of an adoption order.

### Commencement Information

**I93** S. 70 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

*Status: Point in time view as at 28/09/2009.*

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## CHAPTER 7

### MISCELLANEOUS

#### *Adoption allowances*

#### 71 Adoption allowances schemes

- (1) Subject to subsection (3), an adoption agency which is—
  - (a) a local authority must, within such period after the coming into force of this section as the Scottish Ministers may by order direct, prepare an adoption allowances scheme,
  - (b) a registered adoption service may prepare such a scheme.
- (2) An adoption allowances scheme is a scheme for or in connection with the payment by the agency of allowances to any person who has adopted, or intends to adopt, a child in any case where arrangements for the adoption were made or, as the case may be, are to be made by the agency.
- (3) The Scottish Ministers may by regulations make provision for or in connection with adoption allowances schemes.
- (4) Regulations under subsection (3) may in particular make provision for or in connection with specifying—
  - (a) the procedure to be followed by an agency in determining whether a person should be paid an allowance,
  - (b) the circumstances in which an allowance may be paid,
  - (c) the factors to be taken into account in determining the amount of an allowance,
  - (d) the procedure for review, variation and termination of allowances,
  - (e) the information about allowances which is to be supplied by an agency to a person who intends to adopt a child, and
  - (f) the procedure to be followed by an agency in preparing, modifying or revoking an adoption allowances scheme.

#### Commencement Information

- I94** S. 71(1)(a)(3)(4) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.
- I95** S. 71(1)(a)(3)(4) in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- I96** S. 71(1)(b)(2) in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

#### *Prohibited payments*

#### 72 Prohibition of certain payments

- (1) This section applies to any payment (other than an excepted payment) which is made to any person for or in consideration of—
  - (a) the adoption by that person of a child,



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- (b) the giving by that person of any consent required in connection with the adoption of a child,
  - (c) the transfer by that person of the care of a child with a view to the adoption of the child, or
  - (d) the making by that person of any arrangements for the adoption of a child.
- (2) Any person who—
- (a) makes any payment to which this section applies,
  - (b) agrees or offers to make any such payment,
  - (c) receives, or agrees to receive, any such payment, or
  - (d) attempts to obtain any such payment,
- commits an offence.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- (4) Where a person is convicted of an offence under subsection (2), the court may, without prejudice to any power which it has to make any other order in relation to the child as respects whom the offence was committed, order the child to be removed to a place of safety until—
- (a) the child can be returned to the child's parent or guardian, or
  - (b) other arrangements can be made for the child.
- (5) In this section—
- “payment” includes reward,
  - “place of safety” has the meaning given by section 93(1) of the 1995 Act.

#### **Commencement Information**

**I97** S. 72 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### **73 Excepted payments**

- (1) A payment is an excepted payment if it is made by virtue of, or in accordance with, provision made by virtue of this Act, the 2002 Act or the Northern Ireland Order.
- (2) A payment is an excepted payment if—
- (a) it is made to an adoption agency by—
    - (i) a parent or guardian of the child, or
    - (ii) a person who adopts, or proposes to adopt, a child,in respect of expenses reasonably incurred by the agency in connection with the adoption, or proposed adoption, of the child,
  - (b) it is made in respect of any legal or medical expenses incurred or to be incurred by any person in connection with an application which the person has made, or proposes to make, for an adoption order or an order under section 59,
  - (c) it is authorised by the court to which an application for an adoption order is made,

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- (d) it is made by an adoption agency to another adoption agency in consideration of placing the child for adoption,
- (e) it is made by an adoption agency to a voluntary organisation for the time being approved for the purposes of this paragraph by the Scottish Ministers as a fee for the services of the organisation in putting the agency in touch with another adoption agency with a view to the making of arrangements between the adoption agencies for the adoption of a child.

(3) In this section, “payment” includes reward.

#### Commencement Information

**I98** S. 73 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### *Disclosure of medical information about parents*

#### **74 Disclosure of medical information about parents**

- (1) The Scottish Ministers may by regulations make provision for or in connection with disclosure of information about the health of the natural parents of a child who is to be, may be or has been adopted (“the relevant child”).
- (2) In making regulations under subsection (1), the Scottish Ministers must secure that a person to whom information is disclosed by virtue of the regulations has a duty of confidentiality in relation to the information.
- (3) Notwithstanding subsection (2), regulations under subsection (1) may include provision enabling a person to whom information is disclosed by virtue of the regulations, in such circumstances and to such an extent as may be specified in the regulations, to disclose the information to—
  - (a) the relevant child,
  - (b) persons who are to or may adopt, or have adopted, the relevant child.
- (4) Regulations under subsection (1) may, in particular, include provision for or in connection with specifying—
  - (a) the descriptions of person by whom, and to whom, information may be disclosed,
  - (b) the circumstances in which information may be disclosed,
  - (c) the type of information which may, or may not, be disclosed,
  - (d) the circumstances in which consent to disclosure of information need not be obtained,
  - (e) the processing of information by a person to whom information is disclosed.
- (5) In subsection (4)(e), “processing” has the same meaning as in section 1(1) of the Data Protection Act 1998 (c. 28).

#### Commencement Information

**I99** S. 74 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, Sch.

*Status: Point in time view as at 28/09/2009.*

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**1100** S. 74 in force at 28.9.2009 in so far as not already in force by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### *Restrictions on arranging adoptions and placing for adoption*

## **75 Restriction on arranging adoptions and placing children**

- (1) Subject to subsection (2), a person other than an adoption agency who—
  - (a) makes arrangements for the adoption of a child, or
  - (b) places a child for adoption,commits an offence.
- (2) Subsection (1) does not apply if the person proposing to adopt the child or, as the case may be, the person with whom the child is placed is—
  - (a) a parent of the child,
  - (b) any other relative of the child, or
  - (c) where a parent of the child is a member of a relevant couple, the other member of the couple.
- (3) A person who receives a child placed in contravention of subsection (1) knowing that the placement is with a view to the person's adopting the child commits an offence.
- (4) A person who takes part in the management or control of a body of persons—
  - (a) which exists wholly or partly for the purpose of making arrangements for the adoption of children, and
  - (b) which is not an adoption agency,commits an offence.
- (5) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- (6) In any proceedings for an offence under subsection (4), proof of—
  - (a) things done, or
  - (b) words written, spoken or published,by any person taking part in the management or control of the body of persons, or in making arrangements for the adoption of children on behalf of the body, is sufficient evidence of the purpose for which that body exists.
- (7) It is immaterial whether the actions mentioned in paragraphs (a) and (b) of subsection (6) are carried out in the presence of a party to the proceedings.

### **Commencement Information**

**1101** S. 75 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## **76 Adoption societies which are not registered adoption services**

- (1) Subsection (2) applies where—

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- (a) an adoption society is—
    - (i) a registered adoption society, or
    - (ii) registered as respects Northern Ireland under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431), and
  - (b) the society is not a registered adoption service.
- (2) Except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 3(1) of that Act or, as the case may be, Article 3 of the Northern Ireland Order, it must not act as an adoption society in Scotland.

#### Commencement Information

**I102** S. 76 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

#### *Effect of orders, and placing for adoption, under 2002 Act*

### 77 Effect of certain orders made in England and Wales

- (1) An adoption order (within the meaning of section 46(1) of the 2002 Act) has effect in Scotland as it has in England and Wales but as if any reference to the parental responsibility for the child were to the parental responsibilities and parental rights in relation to the child.
- (2) An order made under section 21 of that Act (placement orders), and the variation or revocation of such an order under section 23 or 24 of that Act, have effect in Scotland as they have in England and Wales but as if any reference to the parental responsibility for the child were to the parental responsibilities and parental rights in relation to the child.

#### Commencement Information

**I103** S. 77 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### 78 Effect of placing for adoption etc. under 2002 Act

- (1) If—
  - (a) a child is placed for adoption under section 19 of the 2002 Act (placing children with parental consent), or
  - (b) an adoption agency is authorised to place a child for adoption under that section,
 sections 25 (parental responsibility) and 28(2) to (4) (further consequences of placement) of that Act have effect in Scotland as they have in England and Wales but with the modifications specified in subsection (2).
- (2) Those modifications are—

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- (a) in section 25, 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
- (b) in section 28(2), the reference to the court is to be read as a reference to the appropriate court.

#### Commencement Information

**I104** S. 78 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## 79 Further consequences of placement and placement orders

- (1) Subsection (2) applies where—
  - (a) a child is placed for adoption under section 19 of the 2002 Act (placing children with parental consent), or
  - (b) an adoption agency is authorised to place a child for adoption under that section.
- (2) No order under subsection (1) of section 11 of the 1995 Act (court orders relating to parental responsibilities etc.) of a kind mentioned in subsection (2)(c) (residence orders) of that section may be made in respect of the child.
- (3) On the making of an order under section 21 of the 2002 Act (a “placement order”) in respect of a child, any order under subsection (1) of section 11 of the 1995 Act of a kind mentioned in subsection (2)(c) to (f) (residence orders, contact orders, specific issue orders and interdicts in relation to parental responsibilities) of that section in respect of the child ceases to have effect.
- (4) Where a placement order is in force—
  - (a) no such order as is mentioned in subsection (3) of this section, and
  - (b) no order under section 55 of the 1995 Act (child assessment orders),may be made in respect of the child.

#### Commencement Information

**I105** S. 79 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

**Status:**

Point in time view as at 28/09/2009.

**Changes to legislation:**

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