



Adoption and Children (Scotland) Act 2007

2007 asp 4

PART 1

ADOPTION

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

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- (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.
- (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.

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.

- (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.

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,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

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- (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.

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.