

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4

General

Section 114 - Rules of procedure

363. Subsection (1) provides a power for any matter relating to procedure to be dealt with by court rules. Subsection (2) specifies that any court rules dealing with an application for an adoption order must require notification of certain people (as set out at subsection (3)) of particular aspects of the adoption case set out at subsection (4) and requires notification of the father of the child (if he can be found) who does not have and has never had parental responsibilities and parental rights in respect of the child of the matters at subsection (4)(a) and (b), those being that the application has been made and the date on which and place at which the application will be heard.
364. The people who must be notified, as set out in subsection (3), are anyone whose consent to the making of an adoption order is required and who can be found, or, if no such person can be found, any relative prescribed by rules who can be found; anyone who has consented to the making of an adoption order under section 20 of the 2002 Act (advance consent to adoption) (and who has not withdrawn that consent); and anyone who, if leave were given under section 31(12) of the Act would be entitled to oppose the making of the order.
365. Under subsection (4) the people listed at subsection (3) must be notified that the application has been made, of the date on which the application will be heard and the place where it will be heard; of the fact that the person is entitled to be heard on the application; and that that person does not have to attend the hearing unless they wish to do so, or are requested to do so by the court.
366. By virtue of subsection (6), in the case of an application under section 59 of the Act, rules must require every person who can be found, and whose agreement to the making of the order would be required if the application were for an adoption order, other than a Convention order, to be notified of the matters in subsection (4).

Section 115 - Offences by bodies corporate and partnerships

367. By virtue of subsection (1), where an offence is committed under the Act by a body corporate which is proved to have been committed with the consent or the connivance of a “relevant person”, or because of any neglect by the “relevant person”, the relevant person, as well as the body corporate, will be guilty of the offence and liable to punishment.

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368. Where the affairs of a body corporate are managed by its members, a member is regarded as a relevant person in relation to subsection (1) as regards that person's management functions in relation to the body (subsection 2).
369. Where any offence is committed by a partnership with the consent or connivance of a partner, or because of the neglect of a partner, the partner and the partnership are guilty of the offence and are liable to punishment (subsection 3).
370. By virtue of subsection (4), a "relevant person" in relation to a body corporate means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any of these capacities.

Section 116 - Ancillary provisions

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

Section 117 - Orders and regulations

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

Section 118 - Meaning of "appropriate court"

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

Section 119 - Interpretation

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

Section 120 - Minor and consequential amendments and repeals

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

Section 121 - Short title and commencement

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

Schedule 1: Registration of adoptions

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

Registration of adoption orders

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

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

390. Under paragraph 5, when the Registrar General for Scotland is notified of an adoption order made in respect of a child who matches an entry in the register of births in Scotland in a part of the British Islands other than Scotland, and there is no entry for the child in the Adopted Children Register, the Registrar General for Scotland must mark the

relevant entry with the word “Adopted” followed by the name of the part of the British Islands in which the adoption order was made in brackets. Where there is an entry for the child in the Adopted Children Register, the Registrar General for Scotland must mark the entry in the register of births with the word “Re-adopted” followed by the name of the part of the British Islands in which the adoption order was made in brackets.

391. Where the Registrar General for Scotland is notified that any such adoption order no longer stands, the Registrar must ensure that the marking is cancelled.
392. Where such an adoption order is cancelled, an extract of the entry is not accurate unless both the marking and the cancellation are omitted.

Registration of other adoptions

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

Amendment of orders and rectification of registers

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

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relation to a registrable foreign adoption (by which is meant a Convention order or an overseas adoption). Where such an entry is amended, an extract of the entry is not accurate unless it shows the entry as amended, but without indicating that it has been amended.

Marking of entries on re-registration of birth

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

(b) Schedule 2: Minor and consequential amendments

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

Schedule 3: Repeals

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