



Adoption and Children (Scotland) Act 2007

2007 asp 4

PART 1

ADOPTION

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).

Changes to legislation: Adoption and Children (Scotland) Act 2007, Chapter 3 is up to date with all changes known to be in force on or before 23 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) View outstanding changes

Commencement Information

- II** 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—
 - (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.

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Modifications etc. (not altering text)

- C1** S. 40(1)-(3) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, **Sch. 3**
- C2** S. 40(5)(6) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, **Schs. 3**
- C3** S. 40(10) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, **Schs. 3**

Commencement Information

- I2** 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—
- 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
 - 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—
- the British Nationality Act 1981 (c. 61),
 - the Immigration Act 1971 (c. 77),
 - any instrument having effect under either of those Acts, or
 - any other law for the time being in force which determines British citizenship, British overseas territories citizenship or British Overseas Citizenship.

Modifications etc. (not altering text)

- C4** S. 41 applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, **Sch. 3**

Commencement Information

- I3** 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.

Modifications etc. (not altering text)

- C5** S. 42 applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, **Sch. 3**

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- I4** 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.

Modifications etc. (not altering text)

- C6** S. 43(1)-(3) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, [Sch. 3](#)

Commencement Information

- I5** 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.

Commencement Information

- I6** 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)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 14(3A) inserted by [2020 asp 16 s. 30\(5\)](#)
- s. 14(4A)-(4C) inserted by [2020 asp 16 s. 2\(2\)\(c\)](#)
- s. 84(5A)(5B) inserted by [2020 asp 16 s. 2\(3\)\(c\)](#)