



Adoption (Scotland) Act 1978

1978 CHAPTER 28

An Act to consolidate the enactments relating to adoption in Scotland with amendments to give effect to recommendations of the Scottish Law Commission. [20th July 1978]

Modifications etc. (not altering text)

- C1** Power to amend Act conferred (5.7.1994) by [Human Fertilisation and Embryology Act 1990](#) (c. 37, SIF 83:1), **s. 30(9)(10)** (with ss. 39(3), 43(2)); S.I. 1994/1776, **art. 2(1)**
- C2** Act modified (1.11.1994) by S.I. 1994/2804, **art. 2, Sch. 1**

Commencement Information

- II** Act not in force at Royal Assent; wholly in force at 1.2.1985

PART I

THE ADOPTION SERVICE

The Adoption Service

1 Establishment of Adoption Service.

- (1) It is the duty of every local authority to establish and maintain within their area a service designed to meet the needs, in relation to adoption, of—
- (a) children who have been or may be adopted;
 - (b) parents and guardians of such children; and
 - (c) persons who have adopted or may adopt a child;
- and for that purpose to provide the requisite facilities, or secure that they are provided by approved adoption societies.

- (2) The facilities to be provided as part of the service maintained under subsection (1) include—

^{F1}(a)

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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) arrangements for assessing children and prospective adopters, and placing children for adoption;
 - [^{F2}(bb) counselling and assistance (but, without prejudice to sections 51 to 51B, not assistance in cash) to children who have been adopted and to persons who have adopted a child; and
 - (c) counselling for other persons if they have problems relating to adoption.]
- (3) The facilities of the service maintained under subsection (1) shall be provided in conjunction with the local authority’s other social services and with approved adoption societies in their area, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.
- [^{F3}(3A) In this Part, references to adoption are to the adoption of children, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.]
- (4) The services maintained by local authorities under subsection (1) may be collectively referred to as “the Scottish Adoption Service”; and a local authority or approved adoption society may be referred to as an adoption agency.

Textual Amendments

F1 S. 1(2)(a) repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 2(a), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

F2 S. 1(2)(bb)(c) substituted for s. 1(2)(c) (1.4.1997) by 1995 c. 36, s. 98(1), Sch. 2 para. 2(b) (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

F3 S. 1(3A) inserted (2.7.2001) by 1999 c. 18, s. 9; S.S.I. 2001/235, art. 2

2 Local authorities’ social work.

The social services referred to in section 1(3) are the functions of a local authority [^{F4}under any of the enactments mentioned in subsection (1B) of section 5 of the ^{M1}Social Work (Scotland) Act 1968 (power of Secretary of State to issue directions to local authorities in respect of their functions under certain enactments)], including, in particular but without prejudice to the generality of the foregoing, a local authority’s functions relating to—

- (a) the promotion of the welfare of children by diminishing the need to receive children into care or keep them in care, including (in exceptional circumstances) the giving of assistance in cash;
- (b) the welfare of children in the care of a local authority;
- (c) the welfare of children who are foster children within the meaning of [^{F5}the Foster Children (Scotland) Act 1984];
- [^{F6}(d)
- (e) the provision of residential accommodation for expectant mothers and young children and of day-care facilities;
- (f) the regulation and inspection of nurseries and child minders;
- (g) care and other treatment of children through court proceedings and children’s hearings.

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Textual Amendments

- F4** Words in s. 2 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 111(2)**; S.I. 1996/323, **art. 4(1)(c)**
- F5** Words substituted by **Foster Children (Scotland) Act 1984 (c. 56, SIF 20)**, ss. 22, 23, **Sch. 2 para. 6**
- F6** **S. 2(d)** repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Marginal Citations

- M1** 1968 c. 49.

Adoption societies

3 Approval of adoption societies.

- [^{F7}(1) Subject to any regulations made under section 9(1), a body which is a voluntary organisation may apply to the Secretary of State for his approval to its acting, or as the case may be continuing to act, as an adoption society, whether functioning generally or in relation to some service maintained, or to be maintained, as part of the Scottish Adoption Service and specified in the application (the service so specified being in this section and in section 4 referred to as the body's "specified service").
- (1A) Application under subsection (1) shall be in such manner as may be specified in regulations made by the Secretary of State under this section.
- (2) In considering an application under subsection (1), the Secretary of State shall take into account the matters relating to the applicant specified in subsections (3) to (5) and any other matters which appear to him to be relevant; and if, but only if, he is satisfied that, as the case may be, the applicant is likely to make, or is making, an effective contribution to the Scottish Adoption Service or to the applicant's specified service, he shall by notice to the applicant give the approval sought.
- (2A) Approval under subsection (2) shall operate from such date as may be specified in the notice or, in the case of a renewal of approval, from the date of the notice.]
- (3) In considering the application, the Secretary of State shall have regard, in relation to the period for which approval is sought, to the following—
- (a) the applicant's adoption programme ^{F8} . . . ,
 - [^{F9}(aa) the procedures in accordance with which the applicant deals with, or as the case may be proposes to deal with, complaints arising in relation to its exercise of its functions and, where the applicant is already an approved adoption society, the manner in which it deals with particular complaints,]
 - (b) the number and qualifications of its staff,
 - (c) its financial resources, and
 - (d) the organisation and control of its operations.
- (4) Where it appears to the Secretary of State that the applicant is likely to operate extensively within the area of a particular local authority he shall ask the authority whether they support the application, and shall take account of any views about it put to him by the authority.

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- (5) Where the applicant is already an approved adoption society or, whether before or after the passing of this Act, previously acted as an adoption society, the Secretary of State, in considering the application, shall also have regard to the record and reputation of the applicant in the adoption field, and the [F10 geographical areas within which, the services as respects which] and the scale on which it is currently operating or has operated in the past.
- (6) If after considering the application the Secretary of State is not satisfied that the applicant is likely to make or, as the case may be, is making an effective contribution to the Scottish Adoption Service [F11, or as the case may be to the applicant's specified service], the Secretary of State shall, subject to section 5(1) and (2), by notice inform the applicant that its application is refused.
- (7) If not withdrawn earlier under section 4, approval given under this section shall last for [F12 such period not exceeding] three years from the date on which it becomes operative [F13 as the Secretary of State may specify in the approval], and shall then expire or, in the case of an approved adoption society whose further application for approval is pending at that time, shall expire on the date that application is granted or, as the case may be, refused.

Textual Amendments

- F7** S. 3(1)-(2A) substituted for s. 3(1)(2) (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(a) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F8** Words in s. 3(3)(a) ceased to have effect (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(b) and repealed (1.4.1997) by 1995 c. 36, s. 105(5), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F9** S. 3(3)(aa) inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 98(1), Sch. 2 para. 3 (with s. 103(1)); S.I. 1996/3201, art. 3(2)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F10** Words in s. 3(5) substituted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(c) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F11** Words in s. 3(6) inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(d) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F12** Words in s. 3(7) substituted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(e)(i) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F13** Words in s. 3(7) inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(e)(ii) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)

4 Withdrawal of approval.

- (1) If, while approval of a body under section 3 is operative, it appears to the Secretary of State that the body is not making an effective contribution to the Scottish Adoption Service [F14, or as the case may be to the body's specified service,] he shall, subject to section 5(3) and (4), by notice to the body withdraw the approval from a date specified in the notice.

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- (2) If an approved adoption society fails to provide the Secretary of State with information required by him for the purpose of carrying out his functions under subsection (1), or fails to verify such information in the manner required by him, he may by notice to the society withdraw the approval from a date specified in the notice.
- (3) Where approval is withdrawn under subsection (1) or (2) or expires the Secretary of State may direct the body concerned to make such arrangements as to children who are in its care and other transitional matters as seem to him expedient.

Textual Amendments

F14 Words in s. 4 inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(2) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)

5 Procedure on refusal to approve, or withdrawal of approval from, adoption societies.

- (1) Before notifying a body which has applied for approval that the application is refused in accordance with section 3(6) the Secretary of State shall serve on the applicant a notice—
 - (a) setting out the reasons why he proposes to refuse the application;
 - (b) informing the applicant that it may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.
- (2) If any representations are made by the applicant in accordance with subsection (1), the Secretary of State shall give further consideration to the application taking into account those representations.
- (3) The Secretary of State shall, before withdrawing approval of an adoption society in accordance with section 4(1), serve on the society a notice—
 - (a) setting out the reasons why he proposes to withdraw the approval; and
 - (b) informing the society that it may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.
- (4) If any representations are made by the society in accordance with subsection (3), the Secretary of State shall give further consideration to the withdrawal of approval under section 4(1) taking into account those representations.
- (5) This section does not apply where the Secretary of State, after having considered any representations made by the applicant in accordance with this section, proposes to refuse approval or, as the case may be, to withdraw approval for reasons which have already been communicated to the applicant in a notice under this section.

Welfare of children

^{F156} Duty to promote welfare of child.

- (1) Without prejudice to sections 12(8) and 18(8), in reaching any decision relating to the adoption of a child, a court or adoption agency shall have regard to all the circumstances but—

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- (a) shall regard the need to safeguard and promote the welfare of the child concerned throughout his life as the paramount consideration; and
 - (b) shall have regard so far as practicable—
 - (i) to his views (if he wishes to express them) taking account of his age and maturity; and
 - (ii) to his religious persuasion, racial origin and cultural and linguistic background.
- (2) Without prejudice to the generality of paragraph (b) of subsection (1), a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view for the purposes of that paragraph.]

Textual Amendments

F15 S. 6 substituted (1.4.1997) by 1995 c. 36, s. 95 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

Modifications etc. (not altering text)

C3 S. 6 applied (1.4.1997) by S.I. 1996/3266, reg. 11(5)

[^{F16}6A Duty to consider alternatives to adoption.

In complying with its duties under section 6 of this Act, an adoption agency shall, before making any arrangements for the adoption of a child, consider whether adoption is likely best to meet the needs of that child or whether for him there is some better, practicable, alternative; and if it concludes that there is such an alternative it shall not proceed to make those arrangements.]

Textual Amendments

F16 S. 6A inserted (1.4.1997) by 1995 c. 36, s. 96 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

Modifications etc. (not altering text)

C4 S. 6A applied (1.4.1997) by S.I. 1996/3266, reg. 11(5)

7 Religious upbringing of adopted child.

An adoption agency shall in placing a child for adoption have regard (so far as is practicable) to any wishes of the child's parents and guardians as to the religious upbringing of the child.

Modifications etc. (not altering text)

C5 S. 7 applied (1.4.1997) by S.I. 1996/3266, reg. 11(5)

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Supplemental

^{F17}8

Textual Amendments

F17 S. 8 repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 4, **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

9 Regulation of adoption agencies.

- (1) The Secretary of State may by regulations prohibit unincorporated bodies from applying for approval under section 3; and he shall not approve any unincorporated body whose application is contrary to regulations made under this subsection.
- (2) The Secretary of State may make regulations for any purpose relating to the exercise of its functions by an approved adoption society [^{F18}including, without prejudice to the generality of this subsection, regulations as to procedures for dealing with complaints arising in relation to such exercise.]
- (3) The Secretary of State may make regulations with respect to the exercise by local authorities of their functions of making or participating in arrangements for the adoption of children.

[^{F19}(3A) Regulations under this section may make provision—

- (a) as to the determination by an adoption agency of whether, as regards a child for whose adoption it proposes to make arrangements, any such agreement as is mentioned in sections 16(1)(b)(i) and 18(1)(a) is likely to be forthcoming and as to a period by the end of which, if they have determined that the agreement is unlikely to be forthcoming and if no application has been made for an adoption order in relation to the child, application for an order under section 18(1) shall require to be made in relation to him; and
 - (b) where the case of a child for whose adoption an adoption agency proposes to make arrangements is referred under section 73(4)(c)(ii) or (iii) of the Children (Scotland) Act 1995 to the Principal Reporter (within the meaning of Part II of that Act), as to circumstances in which and, on the occurrence of such circumstances, a period by the end of which, if no application has been made for an adoption order in relation to the child, application for an order under section 18(1) shall require to be made in relation to him.]
- (4) Any person who contravenes or fails to comply with regulations made under subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.
 - (5) Regulations under this section may make different provisions in relation to different cases or classes of cases and may exclude certain cases or classes of cases.

Textual Amendments

F18 Words in s. 9(2) added (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 98(1), **Sch. 2 para. 5(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(4)(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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F19 S. 9(3A) inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 98(1), **Sch. 2 para. 5(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(4)(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

10 **F20**

Textual Amendments

F20 S. 10 repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 9, 30, Sch. 2 para. 39, **Sch. 10 Pt. 1**

11 Restriction on arranging adoptions and placing of children.

(1) A person other than an adoption agency shall not make arrangements for the adoption of a child, or place a child for adoption, unless the proposed adopter is a relative of the child.

[^{F21}(2) An adoption society which is—

- (a) approved as respects England and Wales under section 3 of the Adoption Act ^{M2}1976: or
- (b) registered as respects Northern Ireland under Article 4 of the Adoption (Northern Ireland) Order ^{M3}1987,

but which is not approved under section 3 of this Act, shall not act as an adoption society in Scotland except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 1 of that Act or, as the case may be, Article 3 of that Order.]

(3) A person who—

- (a) takes part in the management or control of a body of persons which exists wholly or partly for the purpose of making arrangements for the adoption of children and which is not an approved adoption society or a local authority; or
- (b) contravenes subsection (1); or
- [^{F22}(c) both receives a child placed with him in contravention of subsection (1) and knows that the placement is with a view to his adopting the child,]

shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both.

(4) In any proceedings for an offence under paragraph (a) of subsection (3), proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the management or control of a body of persons, or in making arrangements for the adoption of children on behalf of the body, shall be sufficient evidence of the purpose for which that body exists.

(5) Section 26 shall apply where a person is convicted of a contravention of subsection (1) as it applies where an application for an adoption order is refused.

Textual Amendments

F21 S. 11(2) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 32** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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F22 S. 11(3)(c) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 6** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Marginal Citations

M2 1976 c.36 (49:11).

M3 S.I. 1987/2203 (N.I. 22).

PART II

ADOPTION ORDERS

The making of adoption orders

12 Adoption orders.

- (1) An adoption order is an order vesting the parental [^{F23}responsibilities and parental rights in relation] to a child in the adopters, made on their application by an authorised court [^{F24}; except that an adoption order may be made in relation to a person who has attained the age of 18 years if the application for it was made before such attainment].
- (2) The order does not affect the parental [^{F25}responsibilities and parental rights] so far as they relate to any period before the making of the order.
- (3) [^{F26}Subject to subsection (3A)]the making of an adoption order operates to extinguish—
 - (a) any parental [^{F27}responsibility or parental right] relating to the child which immediately before the making of the order was vested in a person (not being one of the adopters) who was—
 - (i) a parent of the child, or
 - (ii) a ^{F28} . . . guardian of the child appointed by a deed or by the order of a court;
 - (b) any duty owed to ^{F29} . . . the child—
 - (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 [^{F30}responsibilities and parental rights] in respect of such a period.

^{F31}[(3A) Where the adoption order is made by virtue of section 15(1)(aa), its making shall not operate to extinguish the parental responsibilities and parental rights which immediately before the making of the order were vested in the natural parent to whom the adopter is married.]

- (4) Nothing in subsection (3) shall ^{F32} . . .
extinguish any duty arising under a deed or agreement which constitutes a trust or which expressly provides that the duty is not to be extinguished by the making of an adoption order;
^{F33}(b)
- (5) An adoption order may not be made in relation to a child who is or has been married.
- (6) An adoption order may contain such terms and conditions as the court thinks fit.

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- (7) An adoption order may be made notwithstanding that the child is already an adopted child.
- ^{F34}[(8) An adoption order shall not be made in relation to a child of or over the age of 12 years unless with the child's consent; except that, where the court is satisfied that the child is incapable of giving his consent to the making of the order, it may dispense with that consent.]
- ^{F35}[(9) Where a court making an adoption order in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.]

Textual Amendments

- F23** Words in s. 12(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(a)(i)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F24** Words in s. 12(1) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F25** Words in s. 12(2) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(b)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F26** Words in s. 12(3) inserted (1.4.1997) by 1995 c. 36, **s. 97(1)(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F27** Words in s. 12(3)(a) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(c)(i)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F28** Words in s. 12(3)(a)(ii) repealed (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10, 11(2), **Sch. 2** (with s. 1(3))
- F29** Words in s. 12(3)(b) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F30** Words in s. 12(3)(b) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(c)(ii)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F31** S. 12(3A) inserted (1.4.1997) by 1995 c. 36, **s. 97(1)(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **art. 2**)
- F32** Word "a" in s. 12(4) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F33** S. 12(4)(b) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F34** S. 12(8) substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), **ss. 2(3)(a), 11(2)** (with s. 1(3))
- F35** S. 12(9) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(d)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Modifications etc. (not altering text)

- C6** S. 12 applied (with modifications) (1.6.2003) by The Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 (S.S.I. 2003/19), reg. 1(1), **sch. 3** (with reg. 35)

13 Child to live with adopters before order made.

- (1) Where the applicant, or one of the applicants, is a parent, step-parent or relative of the child, or the child was placed with the applicants by an adoption agency, an adoption order shall not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the applicants or one of them.

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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 subsection (1) does not apply, an adoption order shall not be made unless the child is at least 12 months old and at all times during the preceding 12 months had his home with the applicants or one of them.
- (3) An adoption order shall not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant, or, in the case of an application by a married couple, both applicants together in the home environment have been afforded—
- (a) where the child was placed with the applicant by an adoption agency, to that agency, or
 - (b) in any other case, to the local authority within whose area the home is.

[^{F36}(4) In relation to—

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

subsection (1) shall have effect as if the reference to the preceding 13 weeks were a reference to the preceding six months.]

Textual Amendments

F36 S. 13(4) inserted (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\), ss. 11, 18\(3\); S.S.I. 2003/121, art. 2\(f\)](#)

Modifications etc. (not altering text)

C7 S. 13 excluded (transitionally) by [S.I. 1984/1050, art. 4, Sch. paras. 2, 3](#)

C8 S. 13 applied (with modifications) (1.6.2003) by [The Intercountry Adoption \(Hague Convention\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/19\), reg. 1\(1\), sch. 3 \(with reg. 35\)](#)

14 Adoption by married couple.

[^{F37}(1) ^{F38} . . . , an adoption order shall not be made on the application of more than one person except in the circumstances specified in subsections (1A) and (1B).

(1A) An adoption order may be made on the application of a married couple where both the husband and the wife have attained the age of 21 years.

(1B) An adoption order may be made on the application of a married couple where—

- (a) the husband or the wife—
 - (i) is the father or mother of the child; and
 - (ii) has attained the age of 18 years; and
- (b) his or her spouse has attained the age of 21 years.]

(2) An adoption order shall not be made on the application of a married couple unless—

- (a) at least one of them is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
- (b) the application is for a Convention adoption order and [^{F39}the requirements of regulations under section 17 are] complied with [^{F40}, or.

Status: Point in time view as at 01/06/2003.

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- (c) both of them were habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of their application]

Textual Amendments

- F37** S. 14(1)–(1B) substituted (14.10.1991) for s. 14(1) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 33** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F38** Words in s. 14(1) repealed (1.11.1996) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 8(a), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch. Table**
- F39** Words in s. 14(2)(b) substituted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), **Sch. 2 para. 4(1)** (with s. 17); S.S.I. 2003/121, **art. 2(i)**
- F40** S. 14(2)(c) and the word preceding it added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 8(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

15 Adoption by one person.

- (1) ^{F41} . . . an adoption order may be made on the application of one person where he has attained the age of 21 years and—
- (a) is not married, or
- ^{F42}(aa) not being a person who may make application by virtue of paragraph (b) below, is married to a person—
- (i) who is the natural parent of the child concerned; and
- (ii) in whom are vested parental responsibilities and parental rights in relation to the child,]
- (b) [^{F43}not being a person who may make application by virtue of paragraph (aa) above,] is married and the court is satisfied that—
- (i) his spouse cannot be found, or
- (ii) the spouses have separated and are living apart, and the separation is likely to be permanent, or
- (iii) his spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.
- (2) An adoption order shall not be made on the application of one person unless—
- (a) he is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
- (b) the application is for a Convention adoption order and [^{F44}the requirements of regulations under section 17 are] complied with [^{F45}, or
- (c) he was habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of his application]
- (3) An adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that—
- (a) the other ^{F46} . . . parent is dead or cannot be found [^{F47}or, by virtue of section 28 of the Human Fertilisation and Embryology Act 1990, there is no other parent], or
- (b) there is some other reason justifying the exclusion of the other ^{F46} . . . parent,

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and where such an order is made the reason justifying the exclusion of the other^{F46} . . . parent shall be recorded by the court.

Textual Amendments

- F41 Words in s. 15(1) repealed (1.11.1996) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 9(a), Sch. 5 (with s. 103(1)); S.I. 1996/2203, art. 3(3), Sch. Table
- F42 S. 15(1)(aa) inserted (1.4.1997) by 1995 c. 36, s. 97(2)(a) (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F43 Words in s. 15(1)(b) inserted (1.4.1997) by 1995 c. 36, s. 97(2)(b) (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F44 Words in s. 15(2)(b) substituted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), Sch. 2 para. 4(2) (with s. 17); S.S.I. 2003/121, art. 2(i)
- F45 S. 15(2)(c) and the word preceding it added (1.4.1997) by 1995 c. 36, s. 98(1), Sch. 2 para. 9(b) (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F46 Words in s. 15(3) repealed (1.11.1996) by 1995 c. 36, s. 105(5), Sch. 5 (with s. 103(1)); S.I. 1996/2203, art. 3(3), Sch. Table
- F47 Words in s. 15(3)(a) inserted (1.8.1991) by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), s. 49(5), Sch. 4 para. 6 (with ss. 39(3), 43(2)); S.I. 1991/1400, art. 2(2)

16 Parental agreement.

- (1) An adoption order shall not be made unless—
 - (a) the child is free for adoption by virtue of an order made
 - [^{F48}(i) in Scotland under section 18;
 - (ii) in England and Wales under section 18 of the Adoption Act 1976; or
 - (iii) in Northern Ireland under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987,and not revoked]; or
 - (b) in the case of each parent or guardian of the child the court is satisfied that—
 - (i) he freely, and with full understanding of what is involved, agrees unconditionally to the making of an adoption order (whether or not he knows the identity of the applicants), or
 - (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in subsection (2).

- ^{F49}[(2) The grounds mentioned in subsection (1)(b)(ii) are, that the parent or guardian—
 - (a) is not known, cannot be found or is incapable of giving agreement;
 - (b) is withholding agreement unreasonably;
 - (c) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child—
 - (i) the responsibility to safeguard and promote the child's health, development and welfare; or
 - (ii) if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis;
 - (d) has seriously ill-treated the child, whose reintegration into the same household as the parent or guardian is, because of the serious ill-treatment or for other reasons, unlikely.]

^{F50}(3)

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- (4) Agreement is ineffective for the purposes of subsection (1)(b)(i) if given by the mother less than six weeks after the child's birth.

^{F51}(5)

Textual Amendments

- F48** Words in s. 16(1)(a) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 34 (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F49** S. 16(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 10(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F50** S. 16(3) repealed (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), Sch. 2 para. 4(3), **Sch. 3** (with s. 17); S.S.I. 2003/121, art. 2(i)
- F51** S. 16(5) repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 10(b), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Modifications etc. (not altering text)

- C9** S. 16 applied (with modifications) (1.6.2003) by The Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 (S.S.I. 2003/19), reg. 1(1), **sch. 3** (with reg. 35)

[^{F52}17 Convention adoption orders.

An adoption order shall be made as a Convention adoption order if—

- (a) the application is for a Convention adoption order; and
- (b) such requirements as may be prescribed by regulations made by the Secretary of State are complied with.]

Textual Amendments

- F52** S. 17 substituted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), **ss. 3, 18(3)** (with s. 17); S.S.I. 2003/121, art. 2(b)

Freeing for adoption

18 Freeing child for adoption.

- (1) Where, on an application by an adoption agency [^{F53}which is a local authority], an authorised court is satisfied in the case of each parent or guardian of the child that—
- (a) he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or
 - (b) his agreement to the making of an adoption order should be dispensed with on a ground specified in section 16(2),
- the court shall, subject to subsection (8), make an order declaring the child free for adoption.
- (2) No application shall be made under subsection (1) unless—
- (a) it is made with the consent of a parent or guardian of a child, or

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- (b) the adoption agency is applying for dispensation under subsection (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the adoption agency.
- (3) No agreement required under subsection (1)(a) shall be dispensed with under subsection (1)(b) unless the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.
- (4) An agreement by the mother of the child is ineffective for the purposes of this section if given less than 6 weeks after the child's birth.
- [^{F54}(5) On the making of an order under this section, the parental responsibilities and parental rights in relation to the child are transferred to the adoption agency.]
- (6) Before making an order under this section, the court shall satisfy itself, in relation to each parent or guardian [^{F55}of the child who can be found], that he has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.
- [^{F56}(7) Before making an order under this section in the case of a child whose father is not, and has not been, married to the mother and does not have any parental responsibilities or parental rights in relation to the child, the court shall satisfy itself in relation to any person claiming to be the father that—
- (a) he has no intention of applying for, or, if he did so apply, it is likely that he would be refused, an order under section 11 of the Children (Scotland) 1995 Act (orders in relation to parental responsibilities and parental rights); and
- (b) he has no intention of entering into an agreement with the mother under section 4(1) of that Act (acquisition by natural father by agreement of such responsibilities and rights), or, if he has such an intention, that no agreement under that subsection is likely to be made.]
- [^{F57}(8) An order under this section shall not be made in relation to a child of or over the age of 12 years unless with the child's consent; except that where the court is satisfied that the child is incapable of giving his consent to the making of the order, it may dispense with that consent.]
- [^{F58}(9) Where a court making an order under this section in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.]

Textual Amendments

- F53** Words in s. 18(1) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F54** S. 18(5) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(b)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F55** Words in s. 18(6) substituted by **Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3)**, s. 9, **Sch. 2 para. 40**
- F56** S. 18(7) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(c)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F57** S. 18(8) substituted (25.9.1991) by **Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8)**, **ss. 2(3)(b)**, **11(2)** (with s. 1(3))

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F58 S. 18(9) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(d)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Modifications etc. (not altering text)

C10 S. 18 restricted by S.I. 1984/988, **reg. 16**

19 Progress reports to former parent.

- (1) This section and section 20 apply to any person [^{F59}(in this section and in section 20 referred to as the “relevant parent”)] who was required to be given an opportunity of making a declaration under section 18(6) but [^{F60}either—
 - (a) did not do so; or
 - (b) having done so, subsequently by written notice under this subsection to the adoption agency to which the parental responsibilities and parental rights have been transferred, has withdrawn such declaration.]
- (2) Within the 14 days following the date 12 months after the making of the order under section 18, the adoption agency [^{F61}to which the parental responsibilities and parental rights were transferred] on the making of the order, unless it has previously by notice to the [^{F62}relevant] parent informed him that an adoption order has been made in respect of the child, shall by notice to the [^{F62}relevant] parent inform him—
 - (a) whether an adoption order has been made in respect of the child, and (if not)
 - (b) whether the child has his home with a person with whom he has been placed for adoption.
- (3) If at the time when the [^{F63}relevant] parent is given notice under subsection (2) an adoption order has not been made in respect of the child, it is thereafter the duty of the adoption agency to give notice to the [^{F63}relevant] parent of the making of an adoption order (if and when made), and meanwhile to give the [^{F63}relevant] parent notice whenever the child is placed for adoption or ceases to [^{F64}be placed with a person with a view to his being adopted by that person].
- (4) If at any time [^{F65}the relevant] parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—
 - (a) the agency shall secure that the declaration is recorded by the court which made the order under section 18, and
 - (b) the agency is released from the duty of complying further with subsection (3) as respects [^{F66}that relevant] parent [^{F67}but a declaration under this subsection may be withdrawn in the same way as may a declaration under subsection (6) of section 18, in which event the agency shall no longer be so released]

Textual Amendments

F59 Words in s. 19(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

F60 Words in s. 19(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

F61 Words in s. 19(2) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(b)(i)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**

F62 Words in s. 19(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(b)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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- F63** Words in s. 19(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(c)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F64** Words in s. 19(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(c)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F65** Words in s. 19(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(d)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F66** Words in s. 19(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(d)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F67** Words in s. 19(4) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(d)(iii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

20 Revocation of s. 18 order.

- (1) The [^{F68}relevant] parent, at any time more than 12 months after the making of the order under section 18 when—
- no adoption order has been made in respect of the child, and
 - the child does not have his home with a person with whom he has been placed for adoption,

may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume the parental [^{F69}responsibilities and parental rights].

[^{F70}(1A) The adoption agency, at any time after the making of the order under section 18 when the conditions mentioned in paragraphs (a) and (b) of subsection (1) above are satisfied, may apply to the court which made the order for a further order revoking it.]

- (2) While [^{F71}an application under subsection (1) or (1A)] is pending the adoption agency having the parental [^{F72}responsibilities and parental rights] shall not place the child for adoption without the leave of the court.

[^{F73}(3) Where an order freeing a child for adoption is revoked under this section, the court shall, by an order under section 11 of the Children (Scotland) Act 1995 determine on whom are to be imposed the parental responsibilities, and to whom are to be given the parental rights, in relation to the child.]

- (4) Subject to subsection (5), [^{F74}if an application under subsection (1)] is dismissed on the ground that to allow it would contravene the principle embodied in section 6—
- the [^{F75}relevant] parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and
 - the adoption agency is released from the duty of complying further with section 19(3) as respects that parent.

- (5) Subsection (4)(a) shall not apply where the court which dismissed the application gives leave to the [^{F76}relevant] parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

Textual Amendments

- F68** Word in s. 20(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F69** Words in s. 20(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(a)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**

Status: Point in time view as at 01/06/2003.

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- F70** S. 20(1A) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F71** Words in s. 20(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(c)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F72** Words in s. 20(2) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(c)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.**
- F73** S. 20(3) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(d)** (with s. 103(1)) (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.**
- F74** Words in s. 20(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(e)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F75** Word in s. 20(4)(a) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(e)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F76** Word in s. 20(5) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(f)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

[^{F77}21 Variation of section 18 order so as to substitute one adoption agency for another.

- (1) On an application to which this section applies an authorised court may vary an order under section 18 so as to transfer the parental [^{F78}responsibilities and parental rights] relating to the child from the adoption agency [^{F79}to which they are transferred by virtue of] the order (“the existing agency”:) to another adoption agency (“the substitute agency”:).
- (2) This section applies to any application made jointly by the existing agency and the would-be substitute agency.
- (3) Where an order under section 18 is varied under this section, section 19 shall apply as if the parental [^{F80}responsibilities and parental rights] relating to the child had [^{F81}been transferred to] the substitute agency on the making of the order.]

Textual Amendments

- F77** S. 21 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, **Sch. 10 para. 37** (with s. 108, **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F78** Words in s. 21(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(a)(i)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.**
- F79** Words in s. 21(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(a)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F80** Words in s. 21(3) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(b)(i)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.**
- F81** Words in s. 21(3) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(b)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.** (as amended by S.I. 1997/744, **arts. 2, 3**)

Supplemental

22 Notification to local authority of adoption application.

- (1) An adoption order shall not be made in respect of a child who was not placed with the applicant by an adoption agency unless the applicant has, at least 3 months before the date of the order, given notice to the local authority within whose area he has his home of his intention to apply for the adoption order.

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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) On receipt of such a notice the local authority shall investigate the matter and submit to the court a report of their investigation.
- (3) Under subsection (2), the local authority shall in particular investigate,—
 - (a) so far as is practicable, the suitability of the applicant, and any other matters relevant to the operation of section 6 in relation to the application; and
 - (b) whether the child was placed with the applicant in contravention of section 11.
- (4) A local authority which [^{F82}receive] notice under subsection (1) in respect of a child whom the authority know to be in the care of another local authority shall, not more than 7 days after the receipt of the notice, inform that other local authority in writing that they have received the notice.

Textual Amendments

F82 Word in s. 22(4) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para.38** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

Modifications etc. (not altering text)

C11 S. 22 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. 1 paras. 2, 3

C12 S. 22 applied (with modifications) (1.6.2003) by The Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 (S.S.I. 2003/19), reg. 1(1), **sch. 3** (with reg. 35)

[^{F83}22A Children subject to supervision requirements.

- (1) An approved adoption society shall refer the case of a child who is subject to a supervision requirement to the Principal Reporter where it is satisfied that the best interests of the child would be served by its placing the child for adoption and it intends so to place him.
- (2) On a case being referred to him under subsection (1), the Principal Reporter shall arrange for a children’s hearing to review the supervision requirement in question and shall make any arrangements incidental to that review.
- (3) Subsections (9), (13) and (14) of section 73 of the Children (Scotland) Act 1995 (which provide, respectively, for acting on the review of a supervision requirement, a report by a children’s hearing and consideration of that report) shall apply in relation to a children’s hearing arranged under this section as those subsections apply in relation to one arranged by virtue of subsection (4)(c)(iii) of that section.
- (4) In this section “Principal Reporter” has the same meaning as in Part II of the Children (Scotland) Act 1995.]

Textual Amendments

F83 S. 22A inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 15** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Modifications etc. (not altering text)

C13 S. 22A modified (1.4.1997) by S.I. 1996/3266, **regs. 12(5), 13(2)**

Status: Point in time view as at 01/06/2003.

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23 Reports where child placed by agency.

Where an application for an adoption order relates to a child placed by an adoption agency, the agency shall submit to the court a report on the suitability of the applicants and any other matters relevant to the operation of section 6, and shall assist the court in any manner the court may direct.

Modifications etc. (not altering text)

C14 S. 23 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. 1 paras. 2, 3

24 Restrictions on making adoption orders.

- (1) The court shall not proceed to determine an application for an adoption order in relation to a child where a previous application for a British adoption order made in relation to the child by the same persons was refused by any court unless—
 - (a) in refusing the previous application the court directed that this subsection 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 proceed with the application.
- ^[F84](2) 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 51.
- (3) In considering whether to make an adoption order or an order under section 18(1), the court shall regard the welfare of the child concerned as its paramount consideration and shall not make the order in question unless it considers that it would be better for the child that it should do so than that it should not.]

Textual Amendments

F84 S. 24(2)(3) substituted for s. 24(2) (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 16** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

25 Interim orders.

- (1) Where on an application for an adoption order the requirements ^[F85]—
 - (a) of section 16(1); and
 - (b) in a case where the child was not placed with the applicant by an adoption agency, of section 22(1),
 are complied with], the court may postpone the determination of the application and make an order^[F86] giving parental responsibilities and parental rights to] the applicants for a probationary period not exceeding 2 years upon such terms for the aliment of the child and otherwise as the court thinks fit.
- (2) Where the probationary period specified in an order under subsection (1) is less than 2 years, the court may by a further order extend the period to a duration not exceeding 2 years in all.

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Textual Amendments

- F85** Words in s. 25(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 17(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F86** Words in s. 25(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 17(b)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**

Modifications etc. (not altering text)

- C15** S. 25 excluded (transitionally) by S.I. 1984/1050, **art. 4**, **Sch. 1 paras. 2, 3, 6**

[^{F87} **25A Timetable for resolving question as to whether agreement to adoption order etc. should be dispensed with.**

In proceedings in which the question arises as to whether the court is satisfied as is mentioned in section 16(1)(b)(ii) or 18(1)(b), the court shall, with a view to determining the question without delay—

- (a) draw up a timetable specifying periods within which certain steps must be taken in relation to those proceedings; and
- (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.]

Textual Amendments

- F87** S. 25A inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 18** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

[^{F88} **26**

Textual Amendments

- F88** S. 26 repealed (1.4.1997) by 1996 c. 25, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

PART III

CARE AND PROTECTION OF CHILDREN AWAITING ADOPTION

Restrictions on removal of children

27 Restrictions on removal where adoption agreed or application made under s. 18.

[^{F89}(1) Where—

- (a) an adoption agency has placed a child with a person with a view to his being adopted by the person; and
- (b) the consent of each parent or guardian of the child has been duly obtained to that placement (whether or not in knowledge of the identity of the person),

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any such parent or guardian shall not be entitled to remove the child from the care and possession of the person without the leave either of the adoption agency or of the court.

- (2) The reference in subsection (1) to consent having been duly obtained is to its having been obtained in accordance with such regulations as may be made by the Secretary of State for the purposes of this section.]
- (3) Any person who [^{F90}removes a child in contravention of subsection (1)] shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.
- (4) F91
- (5) F91

Textual Amendments

- F89** S. 27(1)(2) substituted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 98(1), **Sch. 2 para. 19(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(3)(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F90** Words in s. 27(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 19(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F91** S. 27(4)(5) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 9, 30, **Sch. 2 para. 42, Sch. 10**

Modifications etc. (not altering text)

- C16** S. 27 applied (with modifications) (1.6.2003) by **The Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 (S.S.I. 2003/19)**, reg. 1(1), **sch. 3** (with reg. 35)

28 Restrictions on removal where applicant has provided home for 5 years.

- (1) While an application for an adoption order in respect of a child made by the person with whom the child has had his home for the 5 years preceding the application is pending, no person is entitled, against the will of the applicant, to remove the child from the applicant's [^{F92}care and possession] except with the leave of the court or under authority conferred by any enactment or on the arrest of the child.
- (2) Where a person (“the prospective adopter”:) gives notice to the local authority within whose area he has his home that he intends to apply for an adoption order in respect of a child who for the preceding 5 years has had his home with the prospective adopter, no person is entitled, against the will of the prospective adopter, to remove the child from the prospective adopter's [^{F92}care and possession], except with the leave of a court or under authority conferred by any enactment or on the arrest of the child, before—
- the prospective adopter applies for the adoption order, or
 - the period of 3 months from the receipt of the notice by the local authority expires,
- whichever occurs first.
- (3) In any case where subsection (1) or (2) applies and—
- the child was in the care of a local authority before he began to have his home with the applicant or, as the case may be, the prospective adopter, and
 - the child remains in the care of a local authority,

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the authority in whose care the child is shall not remove the child from the care and possession of the applicant or of the prospective adopter except in accordance with section 30 or 31 or with leave of a court.

- (4) Subsection (3) does not apply where the removal of the child is authorised [^{F93}under or by virtue of Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995].
- (5) A local authority which receives such notice as is mentioned in subsection (2) in respect of a child whom the authority know to be in the care of another local authority ^{F94} . . . shall, not more than 7 days after the receipt of the notice, inform that other authority ^{F94} . . . in writing that they have received the notice.
- (6) Subsection (2) does not apply to any further notice served by the prospective adopter on any local authority in respect of the same child during the period referred to in paragraph (b) of that subsection or within 28 days after its expiry.
- (7) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.
- (8) ^{F95}
- (9) ^{F95}
- (10) The Secretary of State may by order amend subsection (1) or (2) to substitute a different period for the period of 5 years mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).
- (11) In subsections (2) and (3) “a court” means a court having jurisdiction to make adoption orders.

Textual Amendments

- F92** Words substituted by [Health and Social Services and Social Security Adjudication Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 43](#)
- F93** Words in s. 28(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), [Sch. 2 para. 20\(a\)](#) (with s. 103(1)); S.I. 1996/3201, [art. 3\(7\)](#) (as amended by S.I. 1997/744, [arts. 2, 3](#))
- F94** Words in s. 28(5) repealed (1.4.1997) by 1995 c. 36, s. 98(1), [Sch. 2 para. 20\(b\)](#) (with s. 103(1)); S.I. 1996/3201, [art. 3\(7\)](#) (as amended by S.I. 1997/744, [arts. 2, 3](#))
- F95** S. 28(8)(9) repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), ss. 9, 30, [Sch. 2 para. 42](#), [Sch. 10](#)

29 Return of child taken away in breach of s. 27 or 28.

- (1) An authorised court may on the application of a person from whose [^{F96}care and possession] a child has been removed in breach of section 27 or 28 [^{F97}, or section 27 or 28 of the Adoption Act 1976][^{F98}or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987] order the person who has so removed the child to return the child to the applicant.
- (2) An authorised 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 [^{F96}care and possession] in breach of section 27 or 28 [^{F97}, or section 27 or 28 of the Adoption Act 1976][^{F98}or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987] by order direct that other person not to remove the child from the applicant’s

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[^{F96}care and possession] in breach of section 27 or 28 [^{F97}, or section 27 or 28 of the Adoption Act 1976][^{F98} or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987].

Textual Amendments

- F96** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c.41, SIF 113:3\)](#), [s. 9 Sch. 2 para. 43](#)
- F97** Words inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c.41, SIF 113:3\)](#), [s. 9, Sch. 2 para. 44](#)
- F98** Words in s. 29 inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), [ss. 88, 108, Sch. 10 para.39](#) (with [Sch. 14 para. 1\(1\)](#)); [S.I. 1991/828](#), [art. 3\(2\)](#)

30 Return of children placed for adoption by adoption agencies.

- (1) Subject to subsection (2), at any time after a child has been delivered into the care and possession of any person in pursuance of arrangements made by an approved adoption society or local authority for the adoption of the child by that person, and before an adoption order has been made on the application of that person in respect of the child—
 - (a) that person may give notice in writing to the society or authority of his intention not to retain the care and possession of the child; or
 - (b) the society or authority may cause notice in writing to be given to that person of their intention not to allow the child to remain in his care and possession.
- (2) No notice under paragraph (b) of subsection (1) shall be given in respect of a child in relation to whom an application has been made for an adoption order except with the leave of the court to which the application has been made.
- (3) Where a notice is given to an adoption society or local authority by any person, or by such a society or authority to any person, under subsection (1), or where an application for an adoption order made by any person in respect of a child placed in his care and possession by such a society or authority is refused by the court or withdrawn, that person shall, within 7 days after the date on which notice was given or the application refused or withdrawn, as the case may be, cause the child to be returned to the society or authority, who shall receive the child.
- (4) Where the period specified in an interim order made under section 25 (whether as originally made or as extended under subsection (2) of that section) expires without an adoption order having been made in respect of the child, subsection (3) shall apply as if the application for an adoption order upon which the interim order was made had been refused at the expiration of that period.
- (5) It shall be sufficient compliance with the requirements of subsection (3) if the child is delivered to, and is received by, a suitable person nominated for the purpose by the adoption society or local authority.
- (6) Where an application for an adoption order is refused the court may, if it thinks fit at any time before the expiry of the period of 7 days mentioned in subsection (3), order that period to be extended to a duration, not exceeding 6 weeks, specified in the order.
- (7) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both; and the court by which the offender is

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convicted may order the child in respect of whom the offence is committed to be returned to his parent or guardian or to the adoption society or local authority which made the arrangements referred to in subsection (1).

Modifications etc. (not altering text)

C17 S. 30 applied (with modifications) (1.6.2003) by [The Intercountry Adoption \(Hague Convention\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/19\)](#), reg. 1(1), **sch. 3** (with reg. 35)

31 Application of s. 30 where child not placed for adoption.

- (1) Where a person gives notice in pursuance of section 22(1) to the local authority within whose area he has his home of his intention to apply for an adoption order in respect of a child who is for the time being in the care of a local authority, not being a child who was delivered into the care and possession of that person in pursuance of such arrangements as are mentioned in section 30(1), that section shall apply as if the child had been so delivered, except that where the application is refused by the court or withdrawn the child need not be returned to the local authority in whose care he is unless that authority so require.
- (2) Where notice of intention is given as aforesaid in respect of any child who is for the time being in the care of a local authority then, until the application for an adoption order has been made and disposed of, any right of the local authority to require the child to be returned to them otherwise than in pursuance of section 30 shall be suspended.
- (3) While the child remains in the care and possession of the person by whom the notice is given no contribution shall be payable (whether under a contribution order or otherwise) in respect of the child by any person liable under section 78 of the ^{M4}Social Work (Scotland) Act 1968 to make contributions in respect of him (but without prejudice to the recovery of any sum due at the time the notice is given), unless 12 weeks have elapsed since the giving of the notice without the application being made or the application has been refused by the court or withdrawn.

Modifications etc. (not altering text)

C18 S. 31 applied (with modifications) (1.6.2003) by [The Intercountry Adoption \(Hague Convention\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/19\)](#), reg. 1(1), **sch. 3** (with reg. 35)

Marginal Citations

M4 1968 c. 49.

Protected children

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Textual Amendments

F99 S. 32 repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 21**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

F100 **33**

Textual Amendments

F100 S. 33 repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 21**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

F101 **34**

Textual Amendments

F101 S. 34 repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 21**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

F102 **35**

Textual Amendments

F102 S. 35 repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 21**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

F103 **36**

Textual Amendments

F103 S. 36 repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 21**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

F104 **37**

Textual Amendments

F104 S. 37 repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 21**; S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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PART IV

STATUS OF ADOPTED CHILDREN

Modifications etc. (not altering text)

C19 Part IV (meaning of "adopted ") applied (5.4.1993) by [Child Support Act 1991 \(SIF 20, c. 48\)](#), [s. 26\(3\)](#) (with [s. 9\(2\)](#)); [S.I. 1992/2644](#), [art.2](#)

38 Meaning of “adoption order”: in Part IV.

- (1) In this Part “adoption order” means—
- (a) an adoption order within the meaning of section 65(1);
 - (b) an adoption order under the ^{M5}Children Act 1975, the ^{M6}Adoption Act 1958, the ^{M7}Adoption Act 1950 or any enactment repealed by the Adoption Act 1950;
 - (c) an order effecting an adoption made in England, Wales, Northern Ireland, the Isle of Man or any of the Channel Islands;
 - [^{F105}(cc) a Convention adoption;]
 - (d) an “overseas adoption”: within the meaning of section 65(2); or
 - (e) any other adoption recognised by the law of Scotland;
- and cognate expressions shall be construed accordingly.
- (2) The definition of adoption order includes, where the context admits, an adoption order which took effect before the commencement of the ^{M8}Children Act 1975.

Textual Amendments

F105 S. 38(1)(cc) inserted (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\)](#), [ss. 5\(1\), 18\(3\)](#) (with [s. 17](#)); [S.S.I. 2003/121](#), [art. 2\(c\)](#)

Marginal Citations

M5 1975 c. 72.
M6 1958 c. 5 (7 & 8 Eliz. 2).
M7 1950 c. 26.
M8 1975 c. 72.

39 Status conferred by adoption.

- [^{F106}(1) A child who is the subject of an adoption order shall be treated in law—
- (a) where the adopters are a married couple, as if—
 - (i) he had been born as a legitimate child of the marriage (whether or not he was in fact born after the marriage was constituted); and
 - (ii) [^{F107}subject to subsection (2A)] he were not the child of any person other than the adopters;
 - (b) where the adoption order is made by virtue of section 15(1)(aa) as if—
 - (i) he had been born as a legitimate child of the marriage between the adopter and the natural parent to whom the adopter is married

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- (whether or not he was in fact born after the marriage was constituted); and
- (ii) [^{F107}subject to subsection (2A)] he were not the child of any person other than the adopter and that natural parent; and
- (c) in any other case, as if—
- (i) he had been born as a legitimate child of the adopter; and
- (ii) [^{F107} subject to subsection (2A)]he were not the child of any person other than the adopter.]
- (2) Where [^{F108}a] child has been adopted by one of his natural parents as sole adoptive parent and the adopter thereafter marries the other natural parent, subsection (1) shall not affect any enactment or rule of law whereby, by virtue of the marriage, the child is rendered the legitimate child of both natural parents.
- [^{F109}(2A) Where, in the case of a child adopted under a Convention adoption, the Court of Session is satisfied, on an application under this subsection—
- (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption;
- (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption, or that 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 child for a direction to be given under this subsection,
- the Court may direct that sub-paragraph (ii) of, as the case may be, paragraph (a), (b) or (c) of subsection (1) shall not apply, or shall not apply to such extent as may be specified in the direction: and in this subsection “full adoption” means an adoption by virtue of which the child falls to be treated in law as if he were not the child of any person other than the adopters or adopter.]
- (3) This section has effect—
- (a) in the case of an adoption before 1st January 1976, from that date, and
- (b) in the case of any other adoption, from the date of the adoption.
- (4) Subject to the provisions of this Part, this section—
- (a) applies for the construction of enactments or instruments passed or made before or after the commencement of this Act so far as the context admits; and
- (b) does not affect things done or events occurring before the adoption or, where the adoption took place before 1st January 1976, before that date.
- (5) This section has effect subject to the provisions of section 44.

Textual Amendments

F106 S. 39(1) substituted (1.4.1997) by 1995 c. 36, s. 97(3) (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

F107 Words in s. 39(1) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 5(2), 18(3) (with s. 17); S.S.I. 2003/121, art. 2(c)

F108 Word in s. 39(2) substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(1), 11(4), Sch. 1 para. 18(2)

F109 S. 39(2A) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 5(3), 18(3) (with s. 17); S.S.I. 2003/121, art. 2(c)

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40 F110

Textual Amendments

F110 S. 40 repealed by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), [Sch. 9](#)

41 Miscellaneous enactments.

- (1) Section 39 does not apply in determining the forbidden degrees of consanguinity and affinity in respect of the law relating to marriage or in respect of the crime of incest, except that, on the making of an adoption order, the adopter and the child shall be deemed, for all time coming, to be within the said forbidden degrees in respect of the law relating to marriage [^{F111}and incest].
- (2) ^{F112}section 39 does not apply for the purposes of any provision of—
- (a) [^{F113}the British Nationality Act 1981],
 - (b) the ^{M9}Immigration Act 1971,
 - (c) any instrument having effect under an enactment within paragraph (a) or (b), or
 - (d) any other law for the time being in force which determines [^{F114}British citizenship, British Dependent Territories citizenship [^{F115}, the status of a British National (Overseas)] or British Overseas citizenship.]
- (3) ^{F116}

Textual Amendments

F111 Words added by [Incest and Related Offences \(Scotland\) Act 1986 \(c. 36, SIF 39:5\)](#), ss. 2(1), 3(4), [Sch. 1 para. 5](#)

F112 Words repealed by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(8), [Sch. 9](#)

F113 Words substituted by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(6), [Sch. 7](#)

F114 Words substituted by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(6), [Sch. 7](#)

F115 Words inserted by [S.I. 1986/948, art. 8, Sch.](#)

F116 S. 41(3)–(5) repealed by [Social Security Act 1988 \(c. 7, SIF 113:1\)](#), ss. 16, 19(3), [Sch. 5](#)

Marginal Citations

M9 [1971 c. 77](#)

42 Pensions.

Section 39(1) does not affect entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of his adoption.

43 Insurance.

Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy shall by virtue of the adoption be transferred to the adoptive parents who

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shall for the purposes of the enactments relating to such societies and companies be treated as the person who took out the policy.

44 Effect of s. 39 on succession and inter vivos deed.

Section 39 (status conferred by adoption) does not affect the existing law relating to adopted persons in respect of—

- (a) the succession to a deceased person (whether testate or intestate), and
- (b) the disposal of property by virtue of any inter vivos deed.

PART V

REGISTRATION AND REVOCATION OF ADOPTION ORDERS AND CONVENTION ADOPTIONS

45 Adopted Children Register.

(1) The Registrar General for Scotland shall maintain at the General Register Office a register, to be called the Adopted Children Register, in which^{F117} such entries as may be—

- (a) directed to be made in it by adoption orders, or
- (b) required to be made under Schedule 1 to this Act,

and no other entries, shall be made.]

(2) An extract of any entry in the Adopted Children Register maintained under this section, if purporting to be sealed or stamped with the seal of the General Register Office, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of the birth or the country of the birth of the adopted person, shall also be received as aforesaid as evidence of that date or country.

(3) The Registrar General for Scotland shall cause an index of the Adopted Children Register maintained under this section to be made and kept in the General Register Office; and the Registrar General for Scotland shall—

- (a) cause a search to be made of that index on behalf of any person or permit that person to search the index himself, and
- (b) issue to any person an extract of any entry in that register which that person may require,

in all respects upon and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 in respect of searches in other indexes kept in the General Register Office and in respect of the supply from that office of extracts of entries in the registers of births, deaths and marriages.

(4) The Registrar General for Scotland shall, in addition to the Adopted Children Register and the index thereto, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the register of births which has been marked “Adopted” pursuant to paragraph 1 of Schedule 1 or any enactment at the time in force and any corresponding entry in the Adopted Children Register maintained under this section.

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- (5) The registers and books kept under subsection (4) shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of the Court of Session or a sheriff, shall, the Registrar General for Scotland furnish any information contained in or any copy or extract from any such registers or books to any person other than an adopted person who has attained the age of [F118]16] years and to whom that information, copy or extract relates or a local authority [F119]Board or adoption society falling within subsection (6) which is providing counselling for that adopted person.
- (6) Where the Registrar General for Scotland furnishes an adopted person with information under subsection (5), he shall advise that person that counselling services are available—
- (a) if the person is in Scotland—
 - (i) from the local authority in whose area he is living;
 - (ii) where the adoption order relating to him was made in Scotland, from the local authority in whose area the court which made the order sat; or
 - (iii) from any other local authority in Scotland;
 - (b) if the person is in England and Wales—
 - (i) from the local authority in whose area he is living;
 - (ii) where the adoption order relating to him was made in England and Wales, from the local authority in whose area the court which made the order sat; or
 - (iii) from any other local authority in England and Wales;
 - (c) if the person is in Northern Ireland—
 - (i) from the Board in whose area he is living;
 - (ii) where the adoption order relating to him was made in Northern Ireland, from the Board in whose area the court which made the order sat; or
 - (iii) from any other Board;
 - (d) if the person is in the United Kingdom and his adoption was arranged by an adoption society—
 - (i) approved under section 3;
 - (ii) approved under section 3 of the Adoption Act 1976; or
 - (iii) registered under Article 4 of the Adoption (Northern Ireland) Order 1987,
 from that society.
- (6A) Where an adopted person who is in Scotland—
- (a) is furnished with information under subsection (5); or
 - (b) applies for information under—
 - (i) section 51(1) of the Adoption Act 1976; or
 - (ii) Article 54 of the Adoption (Northern Ireland) Order 1987,
 any body mentioned in subsection (6B) to which the adopted person applies for counselling shall have a duty to provide counselling for him.
- (6B) The bodies referred to in subsection (6A) are—
- (a) any local authority falling within subsection (6)(a); and
 - (b) any adoption society falling within subsection (6)(d) so far as it is acting as an adoption society in Scotland.]

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- (7) Where an adopted person has arranged to receive counselling [F120 from a local authority Board or adoption society falling within] subsection (6), the Registrar General for Scotland shall, on receipt of a request from the local authority [F121, Board or adoption society], and on payment of the appropriate fee, send to the authority [F122, Board] or society an extract of the entry relating to the adopted person in the register of births.
- (8) The provisions of the M10 Registration of Births, Deaths and Marriages (Scotland) Act 1965 with regard to the correction of errors in entries shall apply to the Adopted Children Register maintained by the Registrar General for Scotland and to registration therein in like manner as they apply to any register of births and to registration therein.
- (9) Schedule 1 to this Act, which, among other things, provides for the registration of adoptions and the amendment of adoption orders, shall have effect.
- [F123(10) In this section—
- “Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) M11 Order 1972; and
- “local authority”, in relation to England and Wales, means the council of a county (other than a metropolitan county), a metropolitan district, a London borough or the Common Council of the City of London.]

Textual Amendments

- F117** Words in s. 45(1) substituted (14.1.2003) by 1999 c. 18, s. 12(1); S.S.I. 2002/562, **art. 2(b)**
- F118** Word in s. 45(5) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 22** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F119** S. 45(6)(6A)(6B) and preceding words substituted (14.10.1991) for s. 45(6) and preceding words by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 41(a)**, (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F120** Words in s. 45(7) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 41(b)(i)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F121** Words in s. 45(7) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 41(b)(ii)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F122** Word in s. 45(7) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 41(b)(iii)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F123** S. 45(10) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20) ss. 88, 108, Sch. 10 para. 41(c) (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

Marginal Citations

- M10** 1965 c. 49.
- M11** S.I. 1972/1265 (N.I. 14).

46 Revocation of adoptions on legitimisation.

- (1) Where the natural parents of [F124a] child, one of whom has adopted him in Scotland, have subsequently married each other, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke that order.

[F125(2)

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- F124** Word substituted by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), ss. 10(1), 11(4), [Sch. 1 para. 18\(3\)](#)
- F125** [S. 46\(2\)](#) repealed (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\)](#), s. 18(3), [Sch. 2 para. 4\(4\)](#), [Sch. 3](#) (with s. 17); S.S.I. 2003/121, art. 2(i)

47 Annulment etc. of overseas adoptions.

- [^{F126}(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 order is contrary to public policy.]
- (2) The Court of Session may, upon an application under this subsection—
- (a) order that an overseas adoption or a determination shall cease to be valid in Great Britain on the ground that the adoption or determination is contrary to public policy or that the authority which purported 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) Any court in Great Britain may, in any proceedings in that court, decide that an overseas adoption or a determination shall, for the purposes of those proceedings, be treated as invalid in Great Britain on either of the grounds mentioned in subsection (2).
- (4) An order or decision of the High Court on an application under subsection (2) of section 53 of the ^{M12}Adoption Act 1976 shall be recognised and have effect as if it were an order or decision of the Court of Session on an application under subsection (2) of this section.
- (5) Except as provided by this section ^{F127}... the validity of [^{F128}a Convention adoption, a Convention adoption order,] an overseas adoption or a determination shall not be impugned in Scotland in proceedings in any court.

Textual Amendments

- F126** [S. 47\(1\)](#) substituted (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\)](#), ss. [6\(1\)](#), [18\(3\)](#) (with s. 17); S.S.I. 2003/121, art. 2(d)
- F127** Words in [s. 47\(5\)](#) repealed (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\)](#), s. 18(3), [Sch. 3](#) (with s. 17); S.S.I. 2003/121, art. 2(j)
- F128** Words in [s. 47\(5\)](#) inserted (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\)](#), ss. [6\(2\)](#), [18\(3\)](#) (with s. 17); S.S.I. 2003/121, art. 2(d)

Marginal Citations

- M12** 1976 c. 36.

48 Provisions supplementary to ss. 46(2) and 47.

- (1) Any application for an order under section ^{F129}... 47 or a decision under section 47(2) (b) shall be made in the prescribed manner and within such period, if any, as may be prescribed.

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- (2) No application shall be made under section ^{F129}... 47(1) in respect of an adoption unless immediately before the application is made the person adopted or the adopter habitually resides in Scotland or, as the case may be, both adopters habitually reside there.
- (3) In deciding in pursuance of section 47 whether such an authority as is mentioned in section 53 was competent to entertain a particular case, a court shall 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 entertain the case.
- (4) In section 47—
 “determination” means such a determination as is mentioned in section 53;
 ^{F130} ...
 ^{F130} ...

Textual Amendments

F129 Words in s. 48(1)(2) repealed (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\), s. 18\(3\), Sch. 3](#) (with s. 17); S.S.I. 2003/121, art. 2(j)

F130 Words in s. 48(4) repealed (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\), ss. 6\(3\), 18\(3\), Sch. 3](#) (with s. 17); S.S.I. 2003/121, art. 2(d)

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

49 Adoption of children abroad.

- (1) Where on an application made in relation to a child by a person who is not domiciled in England and Wales or Scotland [^{F131}or Northern Ireland] an authorised court is satisfied that he intends to adopt the child under the law of or within the country in which the applicant is domiciled, the court may, subject to the following provisions of this section, make an order [^{F132}transferring to him the parental responsibilities and parental rights in relation] to the child.
- (2) The provisions of Part II relating to adoption orders, except sections 12(1), 14(2), 15(2), 17 to 21 and 25, shall apply in relation to orders under this section as they apply in relation to adoption orders subject to the modification that in section 13(1) for “19”: and “13”: there are substituted “32”: and “26”: respectively.
- (3) Section 45 and paragraphs 1 and 2(1) and (3) of Schedule 1 shall apply in relation to an order under this section as they apply in relation to an adoption order except that any entry in the register of births or the Adopted Children Register which is required to be marked in consequence of the making of an order under this section shall, in lieu of being marked with the word “Adopted”: or “Re-adopted”: (with or without the addition of the [^{F133}words “(England)”: or “(Northern Ireland)”:]), be marked with the words “Proposed foreign adoption”: or “Proposed foreign re-adoption”:., as the case may require.

^{F134}(4)

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Textual Amendments

- F131** Words in s. 49(1) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, **Sch. 10 para. 42(a)** (with s. 108, Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**.
- F132** Word in s. 49(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 23** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F133** Words in s. 49(3) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 42(b)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**.
- F134** S. 49(4) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**.

Modifications etc. (not altering text)

- C20** S. 49 excluded by S.I. 1984/1050, **art. 4**, **Sch. 1 para. 3**

50 Restriction on removal of children for adoption outside Great Britain.

- (1) Except under the authority of an order under section 49, or under section 55 of the ^{M13}Adoption Act 1976 [^{F135}or Article 57 of the Adoption (Northern Ireland) Order 1987], it shall not be lawful for any person to take or send a child who is a British subject or a citizen of the Republic of Ireland out of Great Britain to any place outside the United Kingdom, the Channel Islands and the Isle of Man with a view to the adoption of the child by any person not being a parent or guardian or relative of the child; and any person who takes or sends a child out of Great Britain to any place in contravention of this subsection, or makes or takes part in any arrangements for transferring the care and possession of a child to any person for that purpose, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both.
- (2) In any proceedings under this section, a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer shall, upon proof that the officer or the deponent cannot be found in the United Kingdom, be sufficient evidence of the matters stated therein, and it shall not be necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.
- (3) A person shall be deemed to take part in arrangements for transferring the care and possession of a child to a person for the purpose referred to in subsection (1) if—
- (a) he facilitates the placing of the child in the care and possession of that person; or
 - (b) he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, or if he causes another person to do so.

Textual Amendments

- F135** Words in s. 50(1) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, **Sch. 10 para. 43** (with s. 108, Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

Marginal Citations

- M13** 1976 c. 36.

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[^{F136}50A Restriction on bringing children into the United Kingdom for adoption

- (1) A person habitually resident in the British Islands who at any time brings into the United Kingdom for the purpose of adoption a child who is habitually resident outside those Islands shall be guilty of an offence unless such requirements as may be prescribed by regulations made by the Secretary of State are satisfied either—
 - (a) before that time; or
 - (b) within such period beginning with that time as may be so prescribed.
- (2) Subsection (1) does not apply where the child is brought into the United Kingdom for the purpose of adoption by a parent, guardian or relative.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (4) Proceedings for an offence under this section may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this subsection more than three years after the commission of the offence.]

Textual Amendments

F136 S. 50A inserted (2.7.2001) by 1999 c. 18, s. 14; S.S.I. 2001/235, art. 2

51 Prohibition on certain payments.

- (1) Subject to the provisions of this section [^{F137}and of section 51A(3)], it shall not be lawful to make or give to any person any payment or reward for or in consideration of—
 - (a) the adoption by that person of a child;
 - (b) the grant by that person of any agreement or consent required in connection with the adoption of a child;
 - (c) the transfer by that person of the care and possession 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 makes or gives, or agrees or offers to make or give, any payment or reward prohibited by this section, or who receives or agrees to receive or attempts to obtain any such payment or reward, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both; and [^{F138}without prejudice to any power which the court has to make any other order in relation to the child as respects whom the offence was committed, it may order him] to be removed to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him.
- (3) This section does not apply to any payment made to an adoption agency by a parent or guardian of a child or by a person who adopts or proposes to adopt a child, being a payment in respect of expenses reasonably incurred by the agency in connection with the adoption of the child, or to any payment or reward authorised by the court to which an application for an adoption order in respect of a child is made.

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- (4) This section does not apply to—
- (a) any payment made by an adoption agency to a person who has applied or proposes to apply to a court for an adoption order or an order under section 49, being a payment of or towards any legal or medical expenses incurred or to be incurred by that person in connection with the application; or
 - (b) any payment made by an adoption agency to another adoption agency in consideration of the placing of a child in the care and possession of any person with a view to the child's adoption; or
 - (c) any payment made by an adoption agency to a voluntary organisation for the time being approved for the purposes of this paragraph by the Secretary of State as a fee for the services of that organisation in putting that adoption agency into contact with another adoption agency with a view to the making of arrangements between the adoption agencies for the adoption of a child.
- (5) ^{F139}Subject to section 51B, if an adoption agency submits to the Secretary of State a scheme for the payment by the agency of allowances to persons who have adopted or intend to adopt a child where arrangements for the adoption were made, or are to be made, by that agency, and the Secretary of State approves the scheme, this section shall not apply to any payment made in accordance with the scheme ^{F140}(including any such payment made by virtue of section 51B)].
- (6) The Secretary of State, in the case of a scheme approved by him under subsection (5), may at any time—
- ^{F141}(a)
 - (b) revoke the scheme.
- ^{F141}(7)
- (8) ^{F142}
- ^{F141}(9)
- ^{F141}(10)
- ^{F141}(11)

Textual Amendments

- F137** Words in s. 51(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 24(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F138** Words in s. 51(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 24(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F139** Words in s. 51(5) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 24(c)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F140** Words in s. 51(5) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 24(c)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F141** S. 51(6)(a)(7)(9)-(11) repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 24(d), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F142** S. 51(8) repealed by S.I. 1989/194, **art. 2** and expressed to be repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 24(d), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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)

[^{F143}51A Adoption allowances schemes.

- (1) Subject to subsection (2), an adoption agency which is—
- (a) a local authority shall, within such period after the coming into force of this section as the Secretary of State may by order direct;
 - (b) an approved adoption society may, prepare a scheme (in this section and in section 51B referred to as an “adoption allowances scheme”) for 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.
- (2) The Secretary of State may make regulations as respects adoption allowances schemes; and without prejudice to the generality of this subsection such regulations may in particular make provision as to—
- (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 drawing up, in making alterations to, or in revoking and replacing, an adoption allowances scheme.
- (3) Section 51(1) shall not apply to any payment made in accordance with an adoption allowances scheme (including any such payment made by virtue of section 51B).]

Textual Amendments

F143 S. 51A inserted (12.12.1996 for specified purposes and 1.4.1998 for all other purposes) by 1995 c. 36, s. 98(1), **Sch. 2 para. 25** (with s. 103(1)); S.I. 1996/3201, **art. 3(5)(7)(a)** (as amended by S.I. 1997/744, **art. 2**)

[^{F144}51B Transitional provisions as respects adoption allowances.

After the coming into force of section 51A—

- (a) no scheme for the payment of allowances shall bemissible under subsection (5) of section 51; and
- (b) a scheme which has been approved under that subsection of that section shall forthwith be revoked under subsection (6)(b) of that section, so however that where a person was before its revocation receiving payments made in accordance with that scheme he may continue to receive payments so made which, had there been no revocation, would have fallen to be made to him or he may agree to receive, instead of the continued payments, payments made in accordance with an adoption allowances scheme.]

Textual Amendments

F144 S. 51B inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 25** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **art. 2**)

Status: Point in time view as at 01/06/2003.

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52 Restriction on advertisements.

- (1) It shall not be lawful for any advertisement to be published indicating—
- (a) that the parent or guardian of a child desires to cause a child to be adopted; or
 - (b) that a person desires to adopt a child; or
 - (c) that any person (not being an adoption agency) is willing to make arrangements for the adoption of a child.
- (2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

Modifications etc. (not altering text)

C21 S. 52 modified by S.I. 1984/1050, art. 4, Sch. para. 7

53 Effect of determination and orders made in England and Wales and overseas in adoption proceedings.

[^{F145}(1) 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 any of the Channel Islands, the Isle of Man or any colony 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 in the exercise of that power, then, subject to section 53 and any subsequent determination having effect under this subsection, the determination shall have effect in Scotland for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination as the case may be.]

[^{F146}(2) Subsections (2) to (4) of section 12 shall apply in relation to an order freeing a child for adoption (other than an order under section 18) as if it were an adoption order; and on the revocation in England and Wales or Northern Ireland of an order freeing a child for adoption subsection (3) of section 20 shall apply as if the order had been revoked under that section.]

- (3) Sections 12(3) and (4) and 43 apply in relation to a child who is the subject of an order which is similar to an order under section 49 and is made (whether before or after this Act has effect) in England or Wales, Northern Ireland, the Isle of Man or any of the Channel Islands, as they apply in relation to a child who is the subject of an adoption order.

Status: Point in time view as at 01/06/2003.

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Textual Amendments

- F145** S. 53(1) substituted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 6(4), 18(3) (with s. 17); S.S.I. 2003/121, art. 2(d)
- F146** S. 53(2) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 44(b) (with s. 108, Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

54 Evidence of adoption in England, Wales and Northern Ireland.

Any document which is receivable as evidence of any matter—

- (a) in England and Wales under section 50(2) of the ^{M14}Adoption Act 1976; or
- (b) in Northern Ireland under [^{F147}Article 63(1) of the Adoption (Northern Ireland) Order 1987],

shall also be so receivable in Scotland.

Textual Amendments

- F147** Words in s. 54(b) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 45 (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

Marginal Citations

- M14** 1976 c. 36.

55 Evidence of agreement and consent.

- (1) Any agreement or consent which is required by this Act to be given to the making of an order or application for an order ^{F148}... may be given in writing, and, if the document signifying the agreement or consent is witnessed in accordance with rules, it shall be sufficient evidence without further proof of the signature of the person by whom it was executed.
- (2) A document signifying such agreement or consent which purports to be witnessed in accordance with rules, shall be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

Textual Amendments

- F148** Words in s. 55(1) repealed (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), Sch. 3 (with s. 17); S.S.I. 2003/121, art. 2(j)

Modifications etc. (not altering text)

- C22** S. 55 excluded (transitionally) S.I. 1984/1050, art. 4, Sch. para. 2

56 Courts.

- (1) In this Act, “authorised court”:, as respects an application for an order relating to a child, shall be construed as follows.

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- (2) Subject to ^{F149}subsection (5)], if the child is in Scotland when the application is made, the following are authorised courts—
- (a) the Court of Session;
 - (b) the sheriff court of the sheriffdom within which the child is.
- (3) If, in the case of an application for an adoption order or for an order freeing a child for adoption, the child is not in Great Britain when the application is made, the Court of Session is the authorised court.
- ^{F150}(4)
- (5) Subsection (2) does not apply in the case of an application under section 29 but for the purposes of such an application the following are authorised courts—
- (a) if there is pending in respect of the child an application for an adoption order or an order freeing him for adoption, the court in which that application is pending;
 - (b) in any other case—
 - (i) the Court of Session;
 - (ii) the sheriff court of the sheriffdom within which the applicant resides.

Textual Amendments

- F149** Words in s. 56(2) substituted (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\), s. 18\(3\), Sch. 2 para. 4\(5\)\(a\)](#) (with s. 17); S.S.I. 2003/121, art. 2(i)
- F150** S. 56(4) repealed (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\), s. 18\(3\), Sch. 2 para. 4\(5\)\(b\), Sch. 3](#) (with s. 17); S.S.I. 2003/121, art. 2(i)

57 Proceedings to be in private.

All proceedings before the court under Part II, section 29 or section 49 shall be heard and determined in private unless the court otherwise directs.

58 Curators ad litem and reporting officers.

- (1) For the purpose of any application for an adoption order or an order freeing a child for adoption or an order under section 20 or 49, rules shall provide for the appointment, in such cases as are prescribed—
- (a) of a person to act as curator ad litem of the child upon the hearing of the application, with the duty of safe-guarding the interests of the child in the prescribed manner;
 - (b) of a person to act as reporting officer for the purpose of witnessing agreements to adoption and performing such other duties as the rules may prescribe.
- (2) A person who is employed—
- (a) in the case of an application for an adoption order, by the adoption agency by whom the child was placed; or
 - (b) in the case of an application for an order freeing a child for adoption, by the adoption agency by whom the application was made; or
 - (c) in the case of an application under section 20, by the adoption agency with the parental ^{F151}responsibilities and parental rights in relation] to the child,

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shall not be appointed to act as curator ad litem or reporting officer for the purposes of the application but, subject to that, the same person may if the court thinks fit be both curator ad litem and reporting officer.

- (3) Rules may provide for the reporting officer to be appointed before the application is made.

Textual Amendments

F151 Words in s. 58(2)(c) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 26** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

Modifications etc. (not altering text)

C23 S. 58 excluded (transitionally) by S.I. 1984/1050, art. 4, **Sch. paras. 2, 3**

59 Rules of procedure.

- (1) Subject to subsection (4), provision shall be made by act of sederunt with regard to any matter to be prescribed under this Act and generally with regard to all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect.
- (2) In the case of—
- an application for an adoption order in relation to a child who is not free for adoption;
 - an application for an order freeing a child for adoption,
- rules shall require every person who can be found and whose agreement or consent to the making of the order is required to be given or dispensed with under this Act to be notified of a date and place where he may be heard on the application and of the fact that, unless he wishes or the court requires, he need not attend.
- (3) In the case of an application under section 49, rules shall 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 adoption order), to be notified as aforesaid.
- (4) This section does not apply to sections 9, 10 [^{F152}and 11].

Textual Amendments

F152 Words in s. 59(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 2 para. 27** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Modifications etc. (not altering text)

C24 S. 59(2) excluded (transitionally) by S.I. 1984/1050, art. 4, **Sch. para. 2**

60 Orders, rules and regulations.

- (1) Any power to make orders or regulations conferred by this Act on the Secretary of State or the Registrar General for Scotland shall be exercisable by statutory instrument.

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- (2) A statutory instrument containing regulations made under any provision of this Act, except section 3 (1), shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An order under section 28(10) ^{F153} . . . shall not be made unless a draft of the order has been approved by resolution of each House of Parliament.
- (4) An order made under any provision of this Act may be revoked or varied by a subsequent order under that provision.
- (5) Any order, rule or regulation made under this Act may make different provision for different circumstances and may contain such incidental and transitional provisions as the authority making the order or regulation considers expedient.
- (6) The Registrar General for Scotland shall not make regulations under paragraph 1(1) [^{F154}or 3] of Schedule 1 except with the approval of the Secretary of State.
- (7) The ^{M15}Statutory Instruments Act 1946 shall apply to a statutory instrument containing regulations made for the purposes of this Act by the Registrar General for Scotland as if the regulations had been made by a Minister of the Crown.

Textual Amendments

F153 Words in s. 60(3) repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 28, **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

F154 Words in s. 60(6) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), **Sch. 2 para. 4(6)** (with s. 17); S.S.I. 2003/121, art. 2(i)

Marginal Citations

M15 1946 c. 36.

61 Offences by bodies corporate.

Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of, any director, manager, member of the committee, secretary or other officer of the body, he as well as the body shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

62 Service of notices etc.

Any notice or information required to be given under this Act may be given by post.

^{F155}63 Nationality.

.....

Textual Amendments

F155 S. 63 repealed (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), Sch. 2 para. 4(7), **Sch. 3** (with s. 17); S.S.I. 2003/121, art. 2(i)

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64 Internal law of a country.

- (1) In this Act “internal law” in relation to any country means the law applicable in a case where no question arises as to the law in force in any other country.
- (2) In any case where the internal law of a country falls to be ascertained for the purposes of this Act by any court and there are in force in that country two or more systems of internal law, the relevant system shall be ascertained in accordance with any rule in force throughout that country indicating which of the systems is relevant in the case in question or, if there is no such rule, shall be the system appearing to that court to be most closely connected with the case.

65 Interpretation.

- (1) In this Act, unless the context otherwise requires—
 - “adoption agency” in sections 11, 13, 18 to 23 and 27 includes an adoption agency within the meaning of section 1 of the ^{M16}Adoption Act 1976 (adoption agencies in England and Wales) [^{F156}and an adoption agency within the meaning of Article 3 of the Adoption (Northern Ireland) Order 1987 (adoption agencies in Northern Ireland)];
 - [^{F157} “adoption order”—
 - (a) means an order under section 12(1); and
 - (b) in sections 12(3) and (4), 18 to 20, 27, 28, [^{F158}30 and 31] and in the definition of “British adoption order”: in this subsection includes an order under section 12 of the ^{M17}Adoption Act 1976 and Article 12 of the ^{M18}Adoption (Northern Ireland) Order 1987 (adoption orders in England and Wales and Northern Ireland respectively); and
 - (c) in sections 27, 28, [^{F158}30 and 31] includes an order under section 49, section 55 of the Adoption Act 1976 and Article 57 of the Adoption (Northern Ireland) Order 1987 (orders in relation to children being adopted abroad);]
 - “adoption society” means a body of persons whose functions consist of or include the making of arrangements for [^{F159}, or in connection with,] the adoption of children;
 - “approved adoption society” means an adoption society approved under Part I and, in sections 30 and 45, includes an adoption society approved under Part I of the ^{M19}Adoption Act 1976;
 - “authorised court” shall be construed in accordance with section 56;
 - “body of persons” means any body of persons, whether incorporated or unincorporated;
 - [^{F160} “British adoption order” means—
 - (a) an adoption order as defined in this subsection; and
 - (b) an order under any provision for the adoption of a child effected under the law of any British territory outside the United Kingdom;]
 - “British territory” means, for the purposes of any provision of this Act, any of the following countries, that is to say, Great Britain, Northern Ireland, the Channel Islands, the Isle of Man and a colony, being a country designated for the purposes of that provision by order of the Secretary of State or, if no country is so designated, any of those countries;
 - “child”, except where used to express a relationship, means a person who has not attained the age of 18 years;

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[^{F161}“compulsory measures of supervision” has the same meaning as in Part II of the Children (Scotland) Act 1995;]

[^{F162}“the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;]

[^{F162}“Convention adoption” means an adoption effected under the law of a Convention country outside the British Islands, and certified in pursuance of Article 23(1) of the Convention;]

[^{F162}“Convention adoption order” means an adoption order made in accordance with section 17;]

[^{F162}“Convention country” means any country or territory in which the Convention is in force.]

“England” includes Wales;

“guardian” means—

(a) a person appointed by deed or will . . . ^{F163}or by a court of competent jurisdiction to be the guardian of the child, and

^{F164}(b)

“internal law” has the meaning assigned by section 64;

^{F165}“local authority” means a [^{F166}council constituted under section 2 of the Local Government etc. (Scotland) Act 1994] . . .

“notice” means a notice in writing;

“order freeing a child for adoption” means an order under section 18 [^{F167}and, [^{F168}sections 27(2) and 53 includes an order under—

(a) section 18 of the Adoption Act 1976; and

(b) Article 17 or 18 of the Adoption (Northern Ireland) Order 1987;]]

“overseas adoption” has the meaning assigned by subsection (2);

[^{F169}“parent” means, irrespective of whether or not they are, or have been, married to each other—

(a) the mother of the child, where she has parental responsibilities or parental rights in relation to him;

(b) the father of the child where he has such responsibilities or rights; and

(c) both of his parents, where both have such responsibilities or rights;

“parental responsibilities” and “parental rights” have the meanings respectively given by sections 1(3) and 2(4) of the Children (Scotland) Act 1995 (analogous expressions being construed accordingly);]

“place of safety” [^{F170}has the meaning given by section 93(1) of the Children (Scotland) Act 1995 (c.36)]

“prescribed” means prescribed by act of sederunt;

“Registrar General for Scotland” means the Registrar General of Births, Deaths and Marriages for Scotland;

^{F171} . . .

“relative” in relation to a child means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by affinity and includes, where the child is illegitimate, the father of the child and [^{F172}where he is not a parent within the meaning of this Act, and any person who would be a relative within the meaning of this definition if the father were such a parent;];

“rules” means rules made by act of sederunt;

^{F171} . . .

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[^{F173}“supervision requirement” has the same meaning as in Part II of the Children (Scotland) Act 1995;]

“United Kingdom national” means, for the purposes of any provision of this Act, a citizen of the United Kingdom and Colonies satisfying such conditions, if any, as the Secretary of State may by order specify for the purposes of that provision;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit.

- (2) In this Act “overseas adoption” means an adoption of such a description as the Secretary of State may by order specify, being a description of adoptions of children appearing to him to be effected under the law of any country outside [^{F174}the British Islands]; and an order under this subsection may contain provision as to the manner in which evidence of an overseas adoption may be given.
- (3) For the purposes of this Act, a person shall be deemed to make arrangements for the adoption of a child if he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of the child by any other person, whether the adoption is effected, or is intended to be effected, in Great Britain or elsewhere, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, or if he causes another person to do so [^{F175}but the making, under section [^{F176}70 of the Children (Scotland) Act 1995], by a children’s hearing of a supervision requirement which, in respect that it provides as to where he is to reside, facilitates his being placed for adoption by an adoption agency, shall not constitute the making of such arrangements.].
- [^{F177}(3A) In this Act, in relation to the proposed adoption of a child resident outside the British Islands, references to arrangements for the adoption of a child include references to arrangements for an assessment for the purpose of indicating whether a person is suitable to adopt a child or not.]
- (4) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.
- (5) In this Act, except where otherwise indicated—
- (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
 - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
 - (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.
- [^{F178}(6) Any reference in this Act to a child being in, received into or kept in, care (whether or not such care is expressed as being the care of a local authority and except where the context otherwise requires) shall be taken to be a reference to his being looked after by a local authority and shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995; and any reference to the authority in whose care a child is, shall be construed accordingly.]

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Textual Amendments

- F156** Words in s. 65(1) added (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, **Sch. 10 para. 46(a)** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F157** Definition of “adoption order”: in s. 65(1) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 46(b)** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F158** Words in the definition of “adoption order” in s. 65(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F159** Words in the definition of “adoption order” in s. 65(1) inserted (1.4.1997) by 1995 c. 36, s. 94(3) (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F160** Definition of “British adoption order”: in s. 65(1) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 46(c)** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F161** Definition in s. 65(1) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F162** Words in s. 65(1) substituted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), **ss. 8, 18(3)** (with s. 17); S.S.I. 2003/121, **art. 2(e)**
- F163** Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(2), 11(4), **Sch. 2**
- F164** Words in the definition of “guardian” in s. 65(1) repealed (1.11.1996) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 29(a)(iii)**, **Sch. 5** (with s. 103); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F165** Words in s. 65(1) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 15**, (with **Sch. 14 paras. 1(1), 27(4)**); S.I. 1991/828, **art. 3(2)** and expressed to be repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 29(a)(iv)**, **Sch. 5** (with s. 103(1); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F166** Words in the definition of “local authority” in s. 65(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 111(3)**; S.I. 1996/323, **art. 4(1)(c)**
- F167** Words added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 45(b)**
- F168** Words in s. 65(1) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 46(d)** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F169** Definitions in s. 65(1) inserted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(v)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F170** S. 65(1): words in the definition of “place of safety” substituted (1.4.2002) by Regulation of Care (Scotland) Act 2001 (asp 8), s. 79, **Sch. 3 para. 7(11)(b)**; S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)
- F171** Words in s. 65(1) repealed (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), **Sch. 3** (with s. 17); S.S.I. 2003/121, **art. 2(j)**
- F172** Words in the definition of “relative” in s. 65(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(a)(vi)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F173** Definition inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(a)(vii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F174** Words in s. 65(2) substituted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), **Sch. 2 para. 4(8)** (with s. 17); S.S.I. 2003/121, **art. 2(i)**
- F175** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 27, 60(6)**
- F176** Words in s. 65(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F177** S. 65(3A) inserted (10.11.2000) by 1999 c. 18, **s. 13**; S.S.I. 2000/390, **art. 2**
- F178** S. 65(6) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(c)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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)

C25 Words in s. 65(1) inserted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(v)** (with s. 103(1));, S.I. 1996/2203, art. 3(3), **Sch.**

Marginal Citations

M16 1976 c. 36.

M17 1976 c.36 (49:11).

M18 S.I. 1987/2203 (N.I. 22).

M19 1976 c. 36.

66 Transitional provisions, amendments and repeals.

- (1) The transitional provisions contained in Schedule 2 shall have effect.
- (2) The enactments specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Act.
- (3) The enactments specified in Schedule 4 are hereby repealed to the extent specified in column 3 of that Schedule.

Modifications etc. (not altering text)

C26 The text of s. 66(2)(3), Schs. 3, 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated in Sch. 3, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

67 Short title, commencement and extent.

- (1) This Act may be cited as the Adoption (Scotland) Act 1978.
- (2) This Act shall come into force on such date as the Secretary of State may by order appoint and different dates may be appointed for different provisions.
- (3) Until the date appointed under subsection (2) for sections 3, 4, 5 and 8, in this Act and in the ^{M20}Adoption Act 1958 “adoption agency” means a local authority or a registered adoption society within the meaning of the said Act of 1958.
- (4) This Act shall extend to Scotland only.

Modifications etc. (not altering text)

C27 Power of appointment conferred by s. 67(2) fully exercised: S.I. 1984/1050, **art. 3**

Marginal Citations

M20 1958 c. 5 (7 & 8 Eliz. 2).

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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)

SCHEDULES

SCHEDULE 1

Section 45.

REGISTRATION OF ADOPTIONS

Registration of adoption orders

- 1 (1) Every adoption order shall contain a direction to the Registrar General for Scotland to make in the Adopted Children Register maintained by him an entry recording the adoption in such form as the Registrar General for Scotland may by regulations specify.
- [^{F179}(2) The direction contained in a Convention adoption order in pursuance of this paragraph shall include an instruction that the entry made in that register in consequence of the order shall be marked with the words “Convention order”:]
- (3) For the purposes of compliance with the requirements of sub-paragraph (1)—
 - (a) where the precise date of the child’s birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth;
 - (b) where the country of birth of the child is not proved to the satisfaction of the court, then, if it appears probable that the child was born within the United Kingdom, the Channel Islands or the Isle of Man, he shall be treated as having been born in Scotland, and in any other case the particulars of the country of birth may be omitted from the order and from the entry in the Adopted Children Register;and the names to be specified in the order as the name and surname of the child shall be the name or names and surname stated in that behalf in the application for the adoption order, or, if no name or surname is so stated, the original name or names of the child and the surname of the applicant.
- (4) There shall be produced with every application for an adoption order in respect of a child whose birth has been registered under the ^{M21}Registration of Births, Deaths and Marriages (Scotland) Act 1965 or under any enactment repealed by that Act an extract of the entry of the birth.
- (5) Where on an application to a court for an adoption order in respect of a child (not being a child who has previously been the subject of an adoption order made by a court in Scotland under this Act or any enactment at the time in force) there is proved to the satisfaction of the court the identity of the child with a child to whom an entry in the register of births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar General for Scotland to cause the entry in that register to be marked with the word “Adopted”.
- (6) Where an adoption order is made in respect of a child who has previously been the subject of an adoption order made by a court in Scotland under this Act or any enactment at the time in force, the order shall contain a direction to the Registrar

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General for Scotland to cause the previous entry in the Adopted Children Register to be marked with the word “Re-adopted”:

- (7) Where an adoption order is made, the clerk of the court which made the order shall cause the order to be communicated to the Registrar General for Scotland and upon receipt of the communication the Registrar General for Scotland shall cause compliance to be made with the directions contained in the order.

Subordinate Legislation Made

P1 Sch. 1 para. 1(1) power exercised by S.I. 1991/1261

Textual Amendments

F179 Sch. 1 para. 1(2) ceases to have effect (14.1.2003) by virtue of 1999 c. 18, s. 12(2) (with s. 17(1)); S.I. 2002/562, art. 2; Sch. 1 para. 1(2) repealed (prosp.) by 1999, c. 18, ss. 15(2), 18(3), Sch. 3 (with s.17(1))

Marginal Citations

M21 1965 c. 49.

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

- 2 (1) Where the Registrar General for Scotland is notified by the Registrar General that an adoption order has been made by a court in England in respect of a child to whom an entry in the register of births or the Adopted Children Register relates, the Registrar General for Scotland shall cause the entry to be marked “Adopted (England)”: or, as the case may be, “Re-adopted (England)”:
- (2) Where the Registrar General for Scotland is notified by the authority maintaining a register of adoptions in Northern Ireland, the Isle of Man or any of the Channel Islands that an order has been made in that country authorising the adoption of a child to whom an entry in the register of births or the Adopted Children Register relates, he shall cause the entry to be marked “Adopted”: or “Re-adopted”: , as the case may be, followed by the name in brackets of the country in which the order was made.
- (3) Where, after an entry has been marked under the foregoing provisions of this paragraph, the Registrar General for Scotland is notified as aforesaid that the order has been quashed, that an appeal against the order has been allowed or that the order has been revoked, he shall cause the marking to be cancelled; and an extract of an entry in any register, being an entry the marking of which is cancelled under this sub-paragraph, shall be deemed to be accurate if and only if both the marking and the cancellation are omitted therefrom.
- (4) The foregoing provisions of this paragraph shall apply in relation to orders corresponding to orders under section 49 as they apply in relation to orders authorising the adoption of a child; but any marking of an entry required by virtue of this sub-paragraph shall consist of the words “proposed foreign adoption”: or, as the case may require, “proposed foreign re-adoption”: followed by the name in brackets of the country in which the order was made.

Status: Point in time view as at 01/06/2003.

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[^{F180} Registration of foreign adoptions]

Textual Amendments

F180 Sch. 1 para. 3 and cross heading substituted (14.1.2003) by Adoption (Intercountry Aspects) Act 1999 c. 18, s. 12(3) (with s. 17(1)); S.S.I. 2002/562, art. 2

- [^{F1813} (1) If the Registrar General for Scotland is satisfied, on an application under this paragraph, that he has sufficient particulars relating to a child adopted under a registrable foreign adoption to enable an entry to be made in the Adopted Children Register for the child—
- (a) he must make the entry accordingly, and
 - (b) if he is also satisfied that an entry in the register of births relates to the child, he must secure that the entry in that register is marked “Adopted”: or “Re-adopted”:, as the case may be, followed by the name in brackets of the country in which the adoption was effected.
- (2) An entry made in the Adopted Children Register by virtue of this paragraph must be made in the specified form.
- (3) An application under this paragraph must be made, in the specified manner, by a specified person and give the specified particulars.
- (4) In this paragraph—
- “registrable foreign adoption” means a Convention or overseas adoption which satisfies specified requirements;
 - “specified” means specified by regulations made by the Registrar General for Scotland.]

Textual Amendments

F181 Sch. 1 para. 3 and cross heading substituted (14.1.2003) by Adoption (Intercountry Aspects) Act 1999 c. 18, s. 12(3) (with s. 17(1)); S.S.I. 2002/562, art. 2

Amendment of orders and rectification of registers

- 4 (1) The court by which an adoption order has been made may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein, and may—
- (a) if satisfied on the application of the adopter or the adopted person that within one year beginning with the date of the order any new name has been given to the adopted person (whether in baptism or otherwise), or taken by him, either in lieu of or in addition to a name specified in the particulars required to be entered in the Adopted Children Register in pursuance of the order, amend the order by substituting or adding that name in those particulars, as the case may require;
 - (b) if satisfied on the application of any person concerned that a direction for the marking of an entry in the register of births or the Adopted Children Register included in the order in pursuance of sub-paragraph (5) or (6) of paragraph 1 was wrongly so included, revoke that direction.

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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 an adoption order is amended or a direction revoked under sub-paragraph (1), the clerk of the court shall cause the amendment to be communicated in the prescribed manner to the Registrar General for Scotland who shall as the case may require—
- (a) cause the entry in the Adopted Children Register to be amended accordingly; or
 - (b) cause the marking of the entry in the register of births or the Adopted Children Register to be cancelled.
- (3) Where an adoption order is quashed or an appeal against an adoption order allowed by any court, the court shall give directions to the Registrar General for Scotland to cancel any entry in the Adopted Children Register, and any marking of an entry in that Register, or the register of births as the case may be, which was effected in pursuance of the order.
- (4) If the Registrar General for Scotland is satisfied—
- (a) that [^{F182}a Convention adoption,] a Convention adoption order or an overseas adoption has ceased to have effect, whether on annulment or otherwise; or
 - (b) that any entry or mark was erroneously made in pursuance of paragraph 3 in any register mentioned in that paragraph, he may cause such alterations to be made in any such register as he considers are required in consequence of the cesser or to correct the error; and where an entry in such a register is amended in pursuance of this sub-paragraph, an extract of the entry shall be deemed to be accurate if and only if it shows the entry as amended but without indicating that it has been amended.

Textual Amendments

F182 Words in Sch. 1 para. 4(4)(a) inserted (14.1.2003) by 1999 c. 18, s. 12(4); S.I. 2002/562, art. 2

Marking of entries on re-registration of birth

- 5 Without prejudice to any other provision of this Act where, after an entry in the register of births has been marked in accordance with paragraph 2 or 3, the birth is re-registered under section 20(1) of the ^{M22}Registration of Births, Deaths and Marriages (Scotland) Act 1965 (re-registration of birth in certain cases), the entry made on re-registration shall be marked in the like manner.

Marginal Citations

M22 1965 c. 49.

Cancellations in registers on legitimation

- 6 Where an adoption order is revoked under section 46(1) the clerk of the court shall cause the revocation to be communicated in the prescribed manner to the Registrar General for Scotland who shall cause to be cancelled—
- (a) the entry in the Adopted Children Register relating to the adopted person; and

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- (b) the marking with the word “Adopted”: (or, as the case may be, with that word and the word “(England)”) of any entry relating to him in the register of births;
- and an extract of an entry in any register, being an entry the marking of which is cancelled under this paragraph shall be deemed to be accurate if and only if both the marking and the cancellation are omitted therefrom.
- 7 In this Schedule, “Registrar General” means the Registrar General for England and Wales.

SCHEDULE 2

Section 66.

TRANSITIONAL PROVISIONS AND SAVINGS

General

- 1 In so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under that provision.
- 2 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when that period began to run.
- 3 Nothing in this Act shall affect the enactments repealed by this Act in their operation in relation to offences committed before the commencement of this Act.
- 4 Any reference in any enactment or document, whether express or implied, to an enactment repealed by this Act shall, unless the context otherwise requires, be construed as a reference to the corresponding enactment in this Act.

Existing adoption orders

- 5 (1) Without prejudice to paragraph 1, an adoption order made under an enactment at any time before this Act comes into force shall not cease to have effect by virtue only of a repeal effected by this Act.
- (2) Paragraph 4(1) and (2) of Schedule 1 shall apply in relation to an adoption order made before this Act came into force as if the order had been made under section 12, but as if, in sub-paragraph (1)(b) of the said paragraph 4, there were substituted for the reference to paragraph 1(5) and (6) a reference—
- (a) in the case of an order under the ^{M23}Adoption Act 1950, to section 20(4) and (5) of that Act,
- (b) in the case of an order under the ^{M24}Adoption Act 1958, to section 23(4) and (5) of that Act.
- (3) The power of the court under the said paragraph 4(1) to amend an order includes power, in relation to an order made before 1st April 1959, to make on the application of the adopter or adopted person any such amendment of the particulars contained in the order as appears to be required to bring the order into the form in which it would have been made if paragraph 1 of Schedule 1 had applied to the order.

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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) Section 46(1) and paragraph 6 of Schedule 1 shall apply in relation to an adoption order made under an enactment at any time before this Act came into force as they apply in relation to an adoption order made under this Act.

Marginal Citations

M23 1950 c. 26.

M24 1958 c. 5 (7 & 8 Eliz. 2).

Payments relating to adoptions

- 6 Section 51(8), (9) and (10) shall not have effect if, immediately before section 51 comes into force, there is in force in Scotland an order under section 50(8) of the ^{M25}Adoption Act 1958.

Marginal Citations

M25 1958 c. 5 (7 & 8 Eliz. 2).

Registers of adoptions

- 7 Any register or index to a register kept under the ^{M26}Adoption Act 1958, or any register or index deemed to be part of such a register, shall be deemed to be part of the register or index kept under section 45.

Marginal Citations

M26 1958 c. 5 (7 & 8 Eliz. 2).

Commencement of Act

- 8 An order under section 67(2) may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions or any provision of this Act then in force or any provision of the ^{M27}Adoption Act 1958 or the ^{M28}Children Act 1975 as appear to him to be necessary or expedient in consequence of the partial operation of this Act.

Marginal Citations

M27 1958 c. 5 (7 & 8 Eliz. 2).

M28 1975 c. 72.

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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)

SCHEDULE 3

Section 66.

CONSEQUENTIAL AMENDMENTS

Modifications etc. (not altering text)

- C28** The text of s. 66(2)(3), Schs. 3, 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated in Sch. 3, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Children Act 1958 (c. 65)

1—3. **F183**

Textual Amendments

- F183** Sch. 3 paras. 1–3 repealed by [Foster Children \(Scotland\) Act 1984 \(c. 56, SIF 20\)](#), ss. 22, 23, [Sch. 3](#)

- 4 In section 23 of the Succession (Scotland) Act 1964, in subsection (3), for the words from “section”: to “prevent”: there shall be substituted the words “ section or in the Children Act 1975 or in the Adoption (Scotland) Act 1978 shall prevent ” ; and in subsection (5), for the words from “means an order”: to the end of the subsection there shall be substituted the words “ has the same meaning as in section 38 of the Adoption (Scotland) Act 1978 (whether the order took effect before or after the commencement of this Act) ; and “adopted”: means adopted in pursuance of an adoption order ”.
- 5 In section 37(1) of the said Act of 1964, for the words from “nothing in this Act”: to “shall”: where that word first occurs there shall be substituted the words “ nothing in this Act or (as respects paragraph (a) of this subsection) in the Children Act 1975 or the Adoption (Scotland) Act 1978 shall ”.

Legitimation (Scotland Act 1968 (c. 22)

- 6 In section 6(2) of the Legitimation (Scotland) Act 1968, for the words from the beginning to “other shall”: there shall be substituted the words “ The revocation (under this section or otherwise) of any adoption order within the meaning of section 38 of the Adoption (Scotland) Act 1978 in consequence of the marriage of the parents of the adopted person to each other shall ”.
- 7 In section 6(3) of the said Act of 1968, for the words “section 26 of the Adoption Act 1958”: there shall be substituted the words “ section 46 of the Adoption (Scotland) Act 1978 ”.

Social Work (Scotland) Act 1968 (c. 49)

- 8 In section 2(2) of the Social Work (Scotland) Act 1968, after paragraph (h) there shall be inserted the following paragraph—
“*(j) the Adoption (Scotland) Act 1978.*”
- 9 In section 5(2)(c) of the said Act of 1968, for the words “and (h)”: there shall be substituted the words “ (h) and (j) ”.

Status: Point in time view as at 01/06/2003.

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- 10 In section 6(1)(b) of the said Act of 1968—
 (a) in head (ii), for the words “Part IV of the Adoption Act 1958”: there shall be substituted the words “ section 32 of the Adoption (Scotland) Act 1978 ” ;
 (b) in head (iii), for the words “Children Act 1975”: there shall be substituted the words “ Adoption (Scotland) Act 1978 ”.
- 11 In section 10(1) of the said Act of 1968, for the words “and (h)”: there shall be substituted the words “ (h) and (j) ”.
- 12 In section 10(3A) of the said Act of 1968, for the words “Children Act 1975”: there shall be substituted the words “ Adoption (Scotland) Act 1978 ”.
- F184 13

Textual Amendments

F184 Sch. 3 para. 13 repealed (1.4.1997) by 1995 c. 36, s. 105(5), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

- F185 14

Textual Amendments

F185 Sch. 3 para. 14 repealed (1.4.1997) by 1995 c. 36, s. 105(5), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

- F186 15

Textual Amendments

F186 Sch. 3 para. 15 repealed (1.4.1997) by 1995 c. 36, s. 105(5), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

Children Act 1975 (c. 72)

- 16 In section 47(5) of the Children Act 1975, for the words “1958 Act”: in both places where those words occur there shall be substituted the words “ Adoption (Scotland) Act 1978 ”.
- 17 In section 103(1)(a) of the said Act of 1975, for paragraph (i) there shall be substituted the following paragraph—
 “(i) section 58 of the Adoption (Scotland) Act 1978 ;”.
- 18 In section 105 of the said Act of 1975, after the word “time” there shall be inserted the words “ (including such sections as have been repealed by and re-enacted in the Adoption (Scotland) Act 1978 ”.
- 19 In section 107(1) of the said Act of 1975, in the definition of “adoption society”: for the words “1958 Act”: there shall be substituted the words “ Adoption (Scotland) Act 1978 ”.

Status: Point in time view as at 01/06/2003.

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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)

SCHEDULE 4

Section 66.

REPEALS

Modifications etc. (not altering text)

C29 The text of s. 66(2)(3), Schs. 3, 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated in Sch. 3, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short Title	Extent of Repeal
1958 c. 5 (7 & 8 Eliz. 2).	Adoption Act 1958.	The whole Act.
1960 c. 59.	Adoption Act 1960.	The whole Act.
1964 c. 41.	Succession (Scotland) Act 1964.	Section 24(4).
1964 c. 57.	Adoption Act 1964.	The whole Act.
1965 c. 49.	Registration of Births, Deaths and Marriages (Scotland) Act 1965.	In Schedule 1, paragraphs 7 to 10.
1968 c. 49.	Social Work (Scotland) Act 1968.	In Schedule 8, paragraphs 37 to 41.
1968 c. 53.	Adoption Act 1968.	The whole Act.
1969 c. 54.	Children and Young Persons Act 1969.	In Schedule 5, paragraphs 33 and 35.
1973 c. 65.	Local Government (Scotland) Act 1973.	In Schedule 27, paragraph 142.
1975 c. 72.	Children Act 1975.	Sections 1 to 32. Section 100(4), (5) and (9). In section 102(1), the words " Part 1 except section 24(6) or " and paragraph (e). In section 107(1), the definitions of " approved adoption society ", " British adoption order ", " British territory ", " the Convention ", " Convention adoption order ", " Convention country " and " United Kingdom national ", and, in the definition of " guardian ", paragraph (b). Section 107(2A). Section 108(5) and (6). In Schedule 2, paragraphs 1 to 4, 5(1), (2) and (4), 6(1) and (3), and 7. In Schedule 3, paragraphs 17, 21 to 40, 44, 45 and 61 to 65. Sections 22 and 23. Section 51(3). Section 73(2). In section 74(3), the words from " except " to " Schedule 3 ". In Schedule 3, paragraphs 25 to 44.
1976 c. 36.	Adoption Act 1976.	In Schedule 12, the entry relating to the Adoption Act 1958. Section 74(1) and (3). In section 90(2), the words " 74(1) and (3) " and " 17 and 18 ". In Schedule 2, paragraphs 17 and 18.
1977 c. 45.	Criminal Law Act 1977.	In Schedule 12, the entry relating to the Adoption Act 1958.
1978 c. 22.	Domestic Proceedings and Magistrates' Courts Act 1978.	Section 74(1) and (3). In section 90(2), the words " 74(1) and (3) " and " 17 and 18 ". In Schedule 2, paragraphs 17 and 18.

Status:

Point in time view as at 01/06/2003.

Changes to legislation:

Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 08 July 2023. 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.