



Adoption (Scotland) Act 1978

1978 CHAPTER 28

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—
 - (a) temporary board and lodging where needed by pregnant women, mothers or children ;
 - (b) arrangements for assessing children and prospective adopters, and placing children for adoption;
 - (c) counselling for persons with 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.
- (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.

2 Local authorities' social work

The social services referred to in section 1(3) are the functions of a local authority which stand referred to the authority's social work committee, 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 the Children Act 1958 ;
- (d) children who are subject to supervision orders made in matrimonial or custody proceedings ;
- (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.

Adoption societies

3 Approval of adoption societies

- (1) Subject to regulations under section 9(1), a body desiring to act as an adoption society or, if it is already an adoption society, desiring to continue to act as such may, in the manner specified by regulations made by the Secretary of State, apply to the Secretary of State for his approval to its doing so.
- (2) On 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 relevant considerations, and if, but only if, he is satisfied that the applicant is likely to make, or, if the applicant is an approved adoption society, is making, an effective contribution to the Scottish Adoption Service, he shall by notice to the applicant give his approval, which shall be operative from a date 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, including, in particular, its ability to make provision for children who are free for adoption,
 - (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.
- (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 areas within 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, 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 a period of three years from the date on which it becomes operative, 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.

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 he shall, subject to section 5(3) and (4), by notice to the body withdraw the approval from a date specified in the notice.
- (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.

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

6 Duty to promote welfare of child

In reaching any decision relating to the adoption of a child, a court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

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.

Supplemental

8 Inactive or defunct adoption societies

- (1) If it appears to the Secretary of State that an approved adoption society, or one in relation to which approval has been withdrawn under section 4 or has expired, is inactive or defunct he may, in relation to any child who is or was in the care of the society, direct what appears to him to be the appropriate local authority to take any such action as might have been taken by the society or by the society jointly with the authority; and if apart from this section the authority would not be entitled to take that action, or would not be entitled to take it without joining the society in the action, it shall be entitled to do so.
- (2) Before giving a direction under subsection (1) the Secretary of State shall, if practicable, consult both the society and the authority.

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.
- (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.

- (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.

10 Inspection of books, etc., of approved adoption societies

- (1) A local authority may at any time give notice in writing to an approved adoption society, or to any officer of such a society, requiring that society or officer to produce to the authority such books, accounts and other documents relating to the performance by the society of the function of making arrangements for the adoption of children as the authority may consider necessary for its own information or that of the Secretary of State.
- (2) Any such notice may contain a requirement that any information to be furnished in accordance with the notice shall be verified in a manner specified in the notice.
- (3) Any person who fails to comply with the requirements of a notice under 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 £50 or to both.

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.
- (2) An adoption society approved as respects England and Wales under section 3 of the Adoption Act 1976, 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.
- (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
 - (c) receives a child placed with him 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 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.

PART II

ADOPTION ORDERS

The making of adoption orders

12 Adoption orders

- (1) An adoption order is an order vesting the parental rights and duties relating to a child in the adopters, made on their application by an authorised court.
- (2) The order does not affect the parental rights and duties so far as they relate to any period before the making of the order.
- (3) The making of an adoption order operates to extinguish—
 - (a) any parental right or duty 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 tutor, curator or other guardian of the child appointed by a deed or by the order of a court;
 - (b) any duty owed to or by 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 rights and duties in respect of such a period.
- (4) Nothing in subsection (3) shall—
 - (a) 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 ;
 - (b) of itself terminate the appointment or functions of any judicial factor loco tutoris or curator bonis appointed to administer the whole or any part of the child's estate.
- (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.
- (7) An adoption order may be made notwithstanding that the child is already an adopted child.
- (8) An adoption order shall not be made in relation to a child who is a minor unless with the consent of the minor; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.

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.

- (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.

14 Adoption by married couple

- (1) Subject to section 53(1) of the Children Act 1975 (which provides for the making of a custody order instead of an adoption order in certain cases) an adoption order may be made on the application of a married couple where each has attained the age of 21 years but an adoption order shall not otherwise be made on the application of more than one person.
- (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 section 17 is complied with.

15 Adoption by one person

- (1) Subject to section 53(1) of the Children Act 1975 (which provides for the making of a custody order instead of an adoption order in certain cases) 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
 - (b) 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 section 17 is complied with.
- (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 natural parent is dead or cannot be found, or
 - (b) there is some other reason justifying the exclusion of the other natural parent, and where such an order is made the reason justifying the exclusion of the other natural parent shall be recorded by the court.

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 in England and Wales under section 18 of the Adoption Act 1976 and not revoked, or made in Scotland under section 18 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).
- (2) The grounds mentioned in subsection (1)(b)(ii) are that the parent or guardian—
 - (a) cannot be found or is incapable of giving agreement;
 - (b) is withholding his agreement unreasonably ;
 - (c) has persistently failed without reasonable cause to discharge the parental duties in relation to the child;
 - (d) has abandoned or neglected the child ;
 - (e) has persistently ill-treated the child ;
 - (f) has seriously ill-treated the child (subject to subsection (5)).
- (3) Subsection (1) does not apply in any case where the child is not a United Kingdom national and the application for the adoption order is for a Convention adoption order.
- (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.
- (5) Subsection (2)(f) does not apply unless (because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of the parent or guardian is unlikely.

17 Convention adoption orders

- (1) An adoption order shall be made as a Convention adoption order if the application is for a Convention adoption order and the following conditions are satisfied both at the time of the application and when the order is made.
- (2) The child—
 - (a) must be a United Kingdom national or a national of a Convention country, and
 - (b) must habitually reside in British territory or a Convention country, and
 - (c) must not be, or have been, married.
- (3) The applicant or applicants and the child must not all be United Kingdom nationals living in British territory.
- (4) If the application is by a married couple, either—
 - (a) each must be a United Kingdom national or a national of a Convention country, and both must habitually reside in Great Britain, or
 - (b) both must be United Kingdom nationals, and each must habitually reside in British territory or a Convention country,

and if the applicants are nationals of the same Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.

- (5) If the application is by one person, either—
- (a) he must be a United Kingdom national or a national of a Convention country, and must habitually reside in Great Britain, or
 - (b) he must be a United Kingdom national and must habitually reside in British territory or a Convention country,
- and if he is a national of a Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.
- (6) If the child is not a United Kingdom national the order shall not be made—
- (a) except in accordance with the provisions, if any, relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national, and
 - (b) unless the court is satisfied that each person who consents to the order in accordance with that internal law does so with full understanding of what is involved.
- (7) The reference to consents and consultations in subsection (6) does not include a reference to consent by and consultation with the applicant and members of the applicant's family (including his or her spouse), and for the purposes of subsection (6) consents may be proved in the manner prescribed by act of sederunt and the court shall be treated as the authority by whom, under the law mentioned in subsection (6), consents may be dispensed with and the adoption in question may be effected; and where the provisions there mentioned require the attendance before that authority of any person who does not reside in Great Britain, that requirement shall be treated as satisfied for the purposes of subsection (6) if—
- (a) that person has been given a reasonable opportunity of communicating his opinion on the adoption in question to the proper officer or clerk of the court, or to an appropriate authority of the country in question, for transmission to the court; and
 - (b) where he has availed himself of that opportunity, his opinion has been transmitted to the court.
- (8) In subsections (4) and (5) " specified provision " means a provision specified in an order of the Secretary of State as one notified to the Government of the United Kingdom in pursuance of the provisions of the Convention which relate to prohibitions on an adoption contained in the national law of the Convention country in question.

Freeing for adoption

18 Freeing child for adoption

- (1) Where, on an application by an adoption agency, 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),

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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
 - (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.
- (5) On the making of an order under this section, the parental rights and duties relating to the child vest in the adoption agency, and subsections (2) and (3) of section 12 apply as if the order were an adoption order and the agency were the adopters.
- (6) Before making an order under this section, the court shall satisfy itself, in relation to each parent or guardian who agrees to the adoption of the child, 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.
- (7) Before making an order under this section in the case of an illegitimate child whose father is not its guardian, the court shall satisfy itself in relation to any person claiming to be the father that either—
 - (a) he has no intention of applying for custody of the child under section 2 of the Illegitimate Children (Scotland) Act 1930, or
 - (b) if he did apply for custody under that section the application would be likely to be refused.
- (8) An order under this section shall not be made in relation to a child who is a minor unless with the consent of the child; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.

19 Progress reports to former parent

- (1) This section and section 20 apply to any person (" the former parent") who was required to be given an opportunity of making a declaration under section 18(6) but did not do so.
- (2) Within the 14 days following the date 12 months after the making of the order under section 18, the adoption agency in which the parental rights and duties were vested on the making of the order, unless it has previously by notice to the former parent informed him that an adoption order has been made in respect of the child, shall by notice to the former 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 former 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 former parent of the making of an adoption order (if and when made), and meanwhile to give the former parent notice whenever the child is placed for adoption or ceases to have his home with a person with whom he has been placed for adoption.
- (4) If at any time the former 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 that former parent.

20 Revocation of s. 18 order

- (1) The former parent, at any time more than 12 months after the making of the order under section 18 when—
 - (a) no adoption order has been made in respect of the child, and
 - (b) 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 rights and duties.
- (2) While the application is pending the adoption agency having the parental rights and duties shall not place the child for adoption without the leave of the court.
- (3) Where an order freeing a child for adoption is revoked under this section—
 - (a) the parental rights and duties relating to the child are vested in the individual or, as the case may be, the individuals in whom they vested immediately before that order was made ;
 - (b) if the parental rights and duties, or any of them, vested in a local authority or voluntary organisation immediately before the order freeing the child for adoption was made, those rights and duties are vested in the individual or, as the case may be, the individuals in whom they vested immediately before they were vested in the authority or organisation; and
 - (c) any duty extinguished by virtue of section 12(3)(b) of the Adoption Act 1976 or of section 12(3)(b) is forthwith revived,but the revocation does not affect any right or duty so far as it relates to any period before the date of the revocation.
- (4) Subject to subsection (5), if the application is dismissed on the ground that to allow it would contravene the principle embodied in section 6—
 - (a) the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and
 - (b) 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 former 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.

21 Transfer of parental rights and duties between adoption agencies

On the joint application of an adoption agency in which the parental rights and duties relating to a child who is in Scotland are vested under section 18(5) or this section or under section 18(5) or 21 of the Adoption Act 1976, and any other adoption agency, an authorised court may if it thinks fit by order transfer the parental rights and duties to the latter agency.

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.
- (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 receives 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.

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.

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.

- (2) The court shall not make an adoption order in relation to a child unless it is satisfied that the applicants have not, as respects the child, made any payment or given any reward to a person in contravention of section 51.

25 Interim orders

- (1) Where on an application for an adoption order the requirements of sections 16(1) and 22(1) are complied with, the court may postpone the determination of the application and make an order vesting the custody of the child in 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.

26 Care etc. of child on refusal of adoption order

- (1) Where on an application for an adoption order in relation to a child under the age of 16 years the court refuses to make the adoption order then—
- (a) if it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a specified local authority;
 - (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual, the court may by order commit the child to the care of a specified local authority.
- (2) Where the court makes an order under subsection (1)(b), the order may require the payment by either parent to the local authority, while it has the care of the child, of such weekly or other periodical sum towards the aliment of the child as the court thinks reasonable.
- (3) Subsections (2), (4) and (5) of section 11 of the Guardianship Act 1973 (jurisdiction and orders relating to care and custody of children) apply in relation to an order under this section as they apply in relation to an order under that section.

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

- (1) While an application for an adoption order is pending in a case where a parent or guardian of the child has agreed to the making of the adoption order (whether or not he knows the identity of the applicant), the parent or guardian is not entitled, against the will of the person with whom the child has his home, to remove the child from the custody of that person except with the leave of the court.

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- (2) While an application is pending for an order freeing a child for adoption and—
- (a) the child is in the care of the adoption agency making the application, and
 - (b) the application was not made with the consent of each parent or guardian of the child,
- no parent or guardian of the child who did not consent to the application is entitled, against the will of the person with whom the child has his home, to remove the child from the custody of that person except with the leave of the court.
- (3) 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.
- (4) This section, except subsection (3), applies notwithstanding that the child is in England or Wales at the time he is removed.
- (5) Any person who removes a child from the custody of any other person while the child is in Scotland, contrary to section 27 of the Adoption Act 1976 (which makes for England and Wales provision similar to this section), 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.

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 custody 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 custody, except with the leave of a court or under authority conferred by any enactment or on the arrest of the child, before—
- (a) the prospective adopter applies for the adoption order, or
 - (b) 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—
- (a) 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
 - (b) the child remains in the care of a local authority,
- 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, in terms of Part III of the Social Work (Scotland) Act 1968, by a justice of the peace or a children's hearing.

- (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 or of a voluntary organisation shall, not more than 7 days after the receipt of the notice, inform that other authority or the organisation 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) This section, except subsection (7), applies notwithstanding that the child is in England or Wales at the time he is removed.
- (9) Any person who removes a child from the custody of any other person while the child is in Scotland, contrary to section 28 of the Adoption Act 1976 (which makes for England and Wales provision similar to this section), 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.
- (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.

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 custody a child has been removed in breach of section 27 or 28 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 custody in breach of section 27 or 28 by order direct that other person not to remove the child from the applicant's custody in breach of section 27 or 28.

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.

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- (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 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).

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 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.

Protected children

32 Meaning of " protected child "

- (1) Where a person gives notice in pursuance of section 22(1) to the local authority within whose area he lives of his intention to apply for an adoption order in respect of a child, the child is for the purposes of this Part a protected child while he has his home with that person.
- (2) A child shall be deemed to be a protected child for the purposes of this Part if he is a protected child within the meaning of section 32 of the Adoption Act 1976.
- (3) A child is not a protected child by reason of any such notice as is mentioned in subsection (1) while—
 - (a) he is in the care of any person in any such school, home or institution as is mentioned in subsection (3) of section 2 of the Children Act 1958 ; or
 - (b) he is resident in a residential establishment provided for persons suffering from mental disorder under section 59 of the Social Work (Scotland) Act 1968; or
 - (c) he is liable to be detained or subject to guardianship under section 23 of the Mental Health (Scotland) Act 1960.
- (4) A protected child ceases to be a protected child when—
 - (a) the application for an adoption order lapses or is withdrawn;
 - (b) the application for an adoption order is granted or otherwise determined;
 - (c) an order is made awarding custody of the child ;
 - (d) an order is made appointing a guardian of the child ; or
 - (e) the child attains the age of 18 years.

33 Duty of local authorities to secure well-being of protected children

- (1) It shall be the duty of every local authority to secure that protected children within their area are visited from time to time by officers of the authority, who shall satisfy themselves as to the well-being of the children and give such advice as to their care and maintenance as may appear to be needed.
- (2) Any officer of a local authority authorised to visit protected children may, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, inspect any premises in the area of the authority in which such children are to be or are being kept.

34 Removal of protected children from unsuitable surroundings

- (1) If the sheriff is satisfied, on the complaint of a local authority, that a protected child is being kept or is about to be received by any person who is unfit to have his care or in any premises or any environment detrimental or likely to be detrimental to him, the sheriff may make an order for his removal to a place of safety until he can be restored to a parent, relative or guardian of his, or until other arrangements can be made with

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respect to him ; and on proof that there is imminent danger to the health or well-being of the child the power to make an order under this section may be exercised by a justice of the peace acting on the application of a person authorised to visit protected children.

- (2) An order under this section may be executed by any person authorised to visit protected children or by any constable and may be executed on a Sunday.
- (3) A local authority may receive into their care under section 15 of the Social Work (Scotland) Act 1968 any child removed under this section, whether or not the circumstances of the child are such that they fall within paragraphs (a) to (c) of subsection (1) of that section and notwithstanding that he may appear to the local authority to be over the age of 17 years.
- (4) Where a child is removed under this section the local authority shall, if practicable, inform a parent or guardian of the child, or any person who acts as his guardian.

35 Notices and information to be given to local authorities

- (1) Where a person who has a protected child in his care and possession changes his permanent address he shall, not less than 2 weeks before the change, or, if the change is made in an emergency, not later than one week after the change, give notice specifying the new address to the local authority in whose area his permanent address is before the change, and if the new address is in the area of another local authority, the authority to whom the notice is given shall inform that other local authority and give them such of the following particulars as are known to them, that is to say—
 - (a) the name, sex and date and place of birth of the child ;
 - (b) the name and address of every person who is a parent or guardian or acts as a guardian of the child or from whom the child has been or is to be received.
- (2) If a protected child dies, the person in whose care and possession he was at his death shall within 48 hours give notice of the child's death to the local authority.

36 Offences relating to protected children

- (1) A person shall be guilty of an offence if—
 - (a) being required under section 35 to give any notice or information, he fails to give the notice within the time specified in that provision or fails to give the information within a reasonable time, or knowingly makes or causes or procures another person to make any false or misleading statement in the notice or information;
 - (b) he refuses to allow the visiting of a protected child by a duly authorised officer of a local authority or the inspection, under the power conferred by section 33(2), of any premises;
 - (c) he refuses to comply with an order under section 34 for the removal of any child or obstructs any person in the execution of such an order.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

37 Miscellaneous provisions relating to protected children

- (1) For the purposes of sections 14 and 323 of the Criminal Procedure (Scotland) Act 1975 (under which a warrant authorising the search for and removal of a child may be issued on suspicion of unnecessary suffering caused to, or certain offences committed against, the child), any refusal to allow the visiting of a protected child or the inspection of any premises by a person authorised to do so under section 33 shall be treated as giving reasonable cause for such a suspicion.
- (2) A person who maintains a protected child shall be deemed for the purposes of the Life Assurance Act 1774 to have no interest in the life of the child.

PART IV

STATUS OF ADOPTED CHILDREN

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 Children Act 1975, the Adoption Act 1958, the 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;
 - (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 Children Act 1975.

39 Status conferred by adoption

- (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 he had been born as a legitimate child of the marriage (whether or not he was in fact born after the marriage was constituted);
 - (b) in any other case, as if he had been born as a legitimate child of the adopter (but not as a child of any actual marriage of the adopter);and as if he were not the child of any person other than the adopters or adopter.
- (2) Where an illegitimate 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.
- (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—

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- (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.

40 Citizenship

- (1) Where an adoption order is made in relation to a child who is not a citizen of the United Kingdom and Colonies, but the adopter or, in the case of a joint adoption, the adoptive father is a citizen of the United Kingdom and Colonies, the child shall be a citizen of the United Kingdom and Colonies as from the date of the adoption.
- (2) In subsection (1) the reference to an adoption order includes a reference to an order authorising the adoption of a child in England or Wales, Northern Ireland, the Isle of Man or in any of the Channel Islands.
- (3) Where a Convention adoption order, or a specified order ceases to have effect, either on annulment or otherwise, the cesser shall not affect the status as a citizen of the United Kingdom and Colonies of any person who, by virtue of this section or section 19 of the Adoption Act 1958, became such a citizen in consequence of the order.

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.
- (2) Without prejudice to section 40, section 39 does not apply for the purposes of any provision of—
 - (a) the British Nationality Acts 1948 to 1965,
 - (b) the 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 citizenship of the United Kingdom and Colonies.
- (3) Section 39 shall not prevent a person being treated as a near relative of a deceased person for the purposes of section 32 of the Social Security Act 1975 (payment of death grant), if apart from section 39 he would be so treated.
- (4) Section 39 does not apply for the purposes of section 70(3)(b) or section 73(2) of the Social Security Act 1975 (payment of industrial death benefit to or in respect of an illegitimate child of the deceased and the child's mother).
- (5) Subject to regulations made under section 72 of the Social Security Act 1975 (entitlement of certain relatives of deceased to industrial death benefit), section 39 shall not affect the entitlement to an industrial death benefit of a person who would, apart from section 39, be treated as a relative of a deceased person for the purposes of the said section 72.

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 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 shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.
- (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.

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- (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.
- (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 17 years and to whom that information, copy or extract relates or a local authority or an approved adoption society which is providing counselling, under subsection (6), 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) from the local authority for the area where the adopted person lives; or
 - (b) if the adopted person's adoption was arranged by an adoption society which is approved under section 3 or under section 3 of the Adoption Act 1976, from that society,
- and it shall be the duty of such local authority and approved adoption society to provide counselling for adopted persons who have been furnished with information under subsection (5) and who apply to them for counselling in respect of that information and for adopted persons who apply for information under section 51(1) of the Adoption Act 1976.
- (7) Where an adopted person has arranged to receive counselling under subsection (6), the Registrar General for Scotland shall, on receipt of a request from the local authority or adoption society which is providing that counselling, and on payment of the appropriate fee, send to the authority or society an extract of the entry relating to the adopted person in the register of births.
- (8) The provisions of the 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.

46 Revocation of adoptions on legitimation

- (1) Where the natural parents of an illegitimate 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.
- (2) Where a person adopted by his father or mother alone by virtue of a regulated adoption has subsequently become a legitimated person on the marriage of his father and mother, the Court of Session may, upon an application under this subsection by the parties concerned, by order revoke the adoption.

47 Annulment etc. of overseas adoptions

- (1) The Court of Session may, upon an application under this subsection, by order annul a regulated adoption or an adoption effected by a Convention adoption order—
 - (a) on the ground that at the relevant time the adoption was prohibited by a notified provision, if under the internal law then in force in the country of which the adopter was then a national or the adopters were then nationals the adoption could have been impugned on that ground;
 - (b) on the ground that at the relevant time the adoption contravened provisions relating to consents of the internal law relating to adoption of the country of which the adopted person was then a national, if under that law the adoption could then have been impugned on that ground;
 - (c) on any other ground on which the adoption can be impugned under the law for the time being in force in the country in which the adoption was effected.
- (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 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 and section 46(2) the validity of an overseas adoption or a determination shall not be impugned in Scotland in proceedings in any court.

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

- (1) Any application for an order under section 46(2) or 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.
- (2) No application shall be made under section 46(2) or 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;

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" notified provision " means a provision specified in an order of the Secretary of State as one in respect of which a notification to or by the Government of the United Kingdom was in force at the relevant time in pursuance of the provisions of the Convention relating to prohibitions contained in the national law of the adopter; and

" relevant time " means the time when the adoption in question purported to take effect under the law of the country in which it purports to have been effected.

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 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 vesting in him the parental rights and duties relating 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 word " (England)"), be marked with the words " Proposed foreign adoption " or " Proposed foreign re-adoption ", as the case may require.
- (4) References in sections 27, 28, 30, 31 and 32 to an adoption order include references to an order under this section or under section 55 of the Adoption Act 1976.

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 Adoption Act 1976, 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.

51 Prohibition on certain payments

- (1) Subject to the provisions of this section, 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 the court may order any child in respect of whom the offence was committed 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.
- (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.

Status: This is the original version (as it was originally enacted).

- (5) 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.
- (6) The Secretary of State, in the case of a scheme approved by him under subsection (5), may at any time—
 - (a) make, or approve the making by the agency of, alterations to the scheme;
 - (b) revoke the scheme.
- (7) The Secretary of State shall, within seven years of the date on which section 32 of the Children Act 1975 came into force and, thereafter, every five years, publish a report on the operation of the schemes since that date or since the publication of the last report.
- (8) Subject to the following subsection, subsection (5) of this section shall expire on the seventh anniversary of the date on which section 32 of the Children Act 1975 came into force.
- (9) The Secretary of State may by order made by statutory instrument at any time before the said anniversary repeal subsection (8) of this section.
- (10) An order under subsection (9) of this section shall not be made unless a report has been published under subsection (7) of this section.
- (11) Notwithstanding the expiry of subsection (5) of this section or the revocation of a scheme approved under this section, subsection (1) of this section shall not apply in relation to any payment made, whether before or after the expiry of subsection (5) or the revocation of the scheme, in accordance with a scheme which was approved under this section to a person to whom such payments were made—
 - (a) where the scheme was not revoked, before the expiry of subsection (5), or
 - (b) if the scheme was revoked, before the date of its revocation.

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.

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

- (1) Where an authority of a Convention country or any British territory other than Great Britain having power under the law of that country or territory—
 - (a) to authorise or review the authorisation of a regulated adoption or a specified order; or

- (b) to give or review a decision revoking or annulling a regulated adoption, a specified order or a Convention adoption order,
makes a determination in the exercise of that power, then, subject to sections 46(2) and 47 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.
- (2) Subsections (2) and (3) of section 12 shall apply in relation to an order under section 18 of the Adoption Act 1976 (freeing children for adoption in England or Wales) as if the order were an adoption order; and, on the revocation of the order under section 20 of that Act, any duty extinguished by section 12(3)(b) is forthwith revived but the revival does not have effect as respects anything done or not done before the revival.
- (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.

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 Adoption Act 1976 ; or
(b) in Northern Ireland under section 23(4) of the Adoption Act (Northern Ireland) 1967 or any corresponding provision contained in a Measure of the Northern Ireland Assembly for the time being in force,

shall also be so receivable in Scotland.

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 (other than an order to which section 17(6) applies) 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.

56 Courts

- (1) In this Act, " authorised court", as respects an application for an order relating to a child, shall be construed as follows.
- (2) Subject to subsections (4) and (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.

Status: This is the original version (as it was originally enacted).

- (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.
- (4) In the case of an application for a Convention adoption order, paragraph (b) of subsection (2) does not apply.
- (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.

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 safeguarding 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 rights and duties relating to the child,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.

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—

- (a) an application for an adoption order in relation to a child who is not free for adoption ;
- (b) 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, 11 and 32 to 37.

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.

(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) or 51(9) 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) of Schedule 1 except with the approval of the Secretary of State.

(7) The 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.

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.

63 Nationality

- (1) If the Secretary of State by order declares that a description of persons specified in the order has, in pursuance of the Convention, been notified to the Government of the United Kingdom as the description of persons who are deemed to possess the nationality of a particular Convention country, persons of that description shall, subject to the following provisions of this section, be treated for the purposes of this Act as nationals of that country.
- (2) Subject to section 48(3) and subsection (3) of this section, where it appears to the court in any proceedings under this Act, or to any court by which a decision in pursuance of section 47(3) falls to be given, that a person is or was at a particular time a national of two or more countries, then—
 - (a) if it appears to the said court that he is or was then a United Kingdom national, he shall be treated for the purposes of those proceedings or that decision as if he were or had then been a United Kingdom national only ;
 - (b) if, in a case not falling within paragraph (a), it appears to the said court that one only of those countries is or was then a Convention country, he shall be treated for those purposes as if he were or had then been a national of that country only ;
 - (c) if, in a case not falling within paragraph (a), it appears to the said court that two or more of those countries are or were then Convention countries, he shall be treated for those purposes as if he were or had then been a national of such one only of those Convention countries as the said court considers is the country with which he is or was then most closely connected;
 - (d) in any other case, he shall be treated for those purposes as if he were or had then been a national of such one only of those countries as the said court considers is the country with which he is or was then most closely connected.
- (3) A court in which proceedings are brought in pursuance of section 17, 46(2) or 47 shall be entitled to disregard the provisions of subsection (2) in so far as it appears to that court appropriate to do so for the purposes of those proceedings; but nothing in this subsection shall be construed as prejudicing the provisions of section 48(3).
- (4) Where, after such inquiries as the court in question considers appropriate, it appears to the court in any proceedings under this Act, or to any court by which such a decision as aforesaid falls to be given, that a person has no nationality or no ascertainable nationality, he shall be treated for the purposes of those proceedings or that decision as a national of the country in which he resides or, where that country is one of two or more countries having the same law of nationality, as a national of those countries.

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 Adoption Act 1976 (adoption agencies in England and Wales);

" adoption order " means an order under section 12(1) and, in sections 12(3) and (4), 18 to 20 and 30 to 32, includes an order under section 12 of the Adoption Act 1976 (adoption orders in England and Wales);

" adoption society " means a body of persons whose functions consist of or include the making of arrangements for 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 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;

" British adoption order " means an adoption order, an order under section 12 of the Adoption Act 1976 or any provision for the adoption of a child effected under the law of Northern Ireland or 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 ;

" the Convention " means the Convention relating to the adoption of children concluded at The Hague on 15th November 1965 and signed on behalf of the United Kingdom on that date ;

" Convention adoption order " means an adoption order made in accordance with section 17(1);

" Convention country " means any country outside British territory, being a country for the time being designated by an order of the Secretary of State as a country in which, in his opinion, the Convention is in force;

" England " includes Wales ;

" guardian " means—

(a) a person appointed by deed or will in accordance with the provisions of the Guardianship of Infants Acts 1886 and 1925 or the Guardianship of Minors Act 1971 or by a court of competent jurisdiction to be the guardian of the child, and

(b) in the case of an illegitimate child, includes the father where he has custody of the child by virtue of an order under section 9 of the Guardianship of Minors Act 1971, or under section 2 of the Illegitimate Children (Scotland) Act 1930;

Status: This is the original version (as it was originally enacted).

" internal law " has the meaning assigned by section 64;

" local authority " means a regional or islands council and, in sections 13, 22, 28, 30, 31, 35(1) and 45, includes 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 ;

" notice " means a notice in writing;

" order freeing a child for adoption " means an order under section 18;

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

" place of safety " means any residential or other establishment provided by a local authority, a police station, or any hospital, surgery or other suitable place the occupier of which is willing temporarily to receive a child;

" prescribed " means prescribed by act of sederunt;

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

" regulated adoption " means an overseas adoption of a description designated by an order under subsection (2) as that of an adoption regulated by the Convention ;

" 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 any person who would be a relative within the meaning of this definition if the child were the legitimate child of his mother and father;

" rules " means rules made by act of sederunt;

" specified order " means any provision for the adoption of a child effected under enactments similar to section 12(1) and 17 in force in Northern Ireland or any British territory outside the United Kingdom;

"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 Great Britain; 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.
- (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.

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.

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 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.