



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### PART II

#### ADOPTION ORDERS

##### *The making of adoption orders*

#### 12 Adoption orders.

- (1) An adoption order is an order vesting the parental [<sup>F1</sup>responsibilities and parental rights in relation] to a child in the adopters, made on their application by an authorised court [<sup>F2</sup>; except that an adoption order may be made in relation to a person who has attained the age of 18 years if the application for it was made before such attainment].
  - (2) The order does not affect the parental [<sup>F3</sup>responsibilities and parental rights] so far as they relate to any period before the making of the order.
  - (3) [<sup>F4</sup>Subject to subsection (3A)]the making of an adoption order operates to extinguish—
    - (a) any parental [<sup>F5</sup>responsibility or parental right] relating to the child which immediately before the making of the order was vested in a person (not being one of the adopters) who was—
      - (i) a parent of the child, or
      - (ii) a [<sup>F6</sup> . . . guardian of the child appointed by a deed or by the order of a court;
    - (b) any duty owed to [<sup>F7</sup> . . . 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 [<sup>F8</sup>responsibilities and parental rights] in respect of such a period.
- [<sup>F9</sup>(3A) Where the adoption order is made by virtue of section 15(1)(aa), its making shall not operate to extinguish the parental responsibilities and parental rights which immediately before the making of the order were vested in the natural parent to whom the adopter is married.]

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- (4) Nothing in subsection (3) shall <sup>F10</sup> . . .  
 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;  
<sup>F11</sup>(b) . . . . .
- (5) An adoption order may not be made in relation to a child who is or has been married.
- (6) An adoption order may contain such terms and conditions as the court thinks fit.
- (7) An adoption order may be made notwithstanding that the child is already an adopted child.
- [<sup>F12</sup>(8) An adoption order shall not be made in relation to a child of or over the age of 12 years unless with the child’s consent; except that, where the court is satisfied that the child is incapable of giving his consent to the making of the order, it may dispense with that consent.]
- [<sup>F13</sup>(9) Where a court making an adoption order in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.]

#### Textual Amendments

- F1** Words in s. 12(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(a)(i)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F2** Words in s. 12(1) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F3** Words in s. 12(2) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(b)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F4** Words in s. 12(3) inserted (1.4.1997) by 1995 c. 36, **s. 97(1)(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F5** Words in s. 12(3)(a) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(c)(i)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F6** Words in s. 12(3)(a)(ii) repealed (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10, 11(2), **Sch. 2** (with s. 1(3))
- F7** Words in s. 12(3)(b) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F8** Words in s. 12(3)(b) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(c)(ii)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F9** S. 12(3A) inserted (1.4.1997) by 1995 c. 36, **s. 97(1)(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **art. 2**)
- F10** Word “a” in s. 12(4) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F11** S. 12(4)(b) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F12** S. 12(8) substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), **ss. 2(3)(a), 11(2)** (with s. 1(3))
- F13** S. 12(9) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(d)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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### 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.

#### Modifications etc. (not altering text)

C1 S. 13 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. paras. 2, 3

### 14 Adoption by married couple.

- [<sup>F14</sup>(1) <sup>F15</sup>. . ., an adoption order shall not be made on the application of more than one person except in the circumstances specified in subsections (1A) and (1B).
- (1A) An adoption order may be made on the application of a married couple where both the husband and the wife have attained the age of 21 years.
  - (1B) An adoption order may be made on the application of a married couple where—
    - (a) the husband or the wife—
      - (i) is the father or mother of the child; and
      - (ii) has attained the age of 18 years; and
    - (b) his or her spouse has attained the age of 21 years.]
    - (2) An adoption order shall not be made on the application of a married couple unless—
      - (a) at least one of them is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
      - (b) the application is for a Convention adoption order and section 17 is complied with [<sup>F16</sup>, or,
      - (c) both of them were habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of their application]

#### Textual Amendments

F14 S. 14(1)–(1B) substituted (14.10.1991) for s. 14(1) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 33 (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

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- F15** Words in s. 14(1) repealed (1.11.1996) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 8(a), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F16** S. 14(2)(c) and the word preceding it added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 8(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

## 15 Adoption by one person.

- (1) <sup>F17</sup> . . . 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
  - <sup>F18</sup>(aa) not being a person who may make application by virtue of paragraph (b) below, is married to a person—
    - (i) who is the natural parent of the child concerned; and
    - (ii) in whom are vested parental responsibilities and parental rights in relation to the child,]
  - (b) [<sup>F19</sup>not being a person who may make application by virtue of paragraph (aa) above,]is married and the court is satisfied that—
    - (i) his spouse cannot be found, or
    - (ii) the spouses have separated and are living apart, and the separation is likely to be permanent, or
    - (iii) his spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.
- (2) An adoption order shall not be made on the application of one person unless—
- (a) he is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
  - (b) the application is for a Convention adoption order and section 17 is complied with [<sup>F20</sup>, or
  - (c) he was habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of his application]
- (3) An adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that—
- (a) the other <sup>F21</sup> . . . parent is dead or cannot be found [<sup>F22</sup>or, by virtue of section 28 of the Human Fertilisation and Embryology Act 1990, there is no other parent], or
  - (b) there is some other reason justifying the exclusion of the other <sup>F21</sup> . . . parent, and where such an order is made the reason justifying the exclusion of the other <sup>F21</sup> . . . parent shall be recorded by the court.

### Textual Amendments

- F17** Words in s. 15(1) repealed (1.11.1996) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 9(a), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F18** S. 15(1)(aa) inserted (1.4.1997) by 1995 c. 36, s. **97(2)(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F19** Words in s. 15(1)(b) inserted (1.4.1997) by 1995 c. 36, s. **97(2)(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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- F20** S. 15(2)(c) and the word preceding it added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 9(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F21** Words in s. 15(3) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch. Table**
- F22** Words in s. 15(3)(a) inserted (1.8.1991) by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), s. 49(5), **Sch. 4 para. 6** (with ss. 39(3), 43(2)); S.I. 1991/1400, **art. 2(2)**

## 16 Parental agreement.

- (1) An adoption order shall not be made unless—
- (a) the child is free for adoption by virtue of an order made
- [<sup>F23</sup>(i) in Scotland under section 18;
- (ii) in England and Wales under section 18 of the Adoption Act 1976; or
- (iii) in Northern Ireland under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987,
- and not revoked]; or
- (b) in the case of each parent or guardian of the child the court is satisfied that—
- (i) he freely, and with full understanding of what is involved, agrees unconditionally to the making of an adoption order (whether or not he knows the identity of the applicants), or
- (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in subsection (2).
- [<sup>F24</sup>(2) The grounds mentioned in subsection (1)(b)(ii) are, that the parent or guardian—
- (a) is not known, cannot be found or is incapable of giving agreement;
- (b) is withholding agreement unreasonably;
- (c) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child—
- (i) the responsibility to safeguard and promote the child’s health, development and welfare; or
- (ii) if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis;
- (d) has seriously ill-treated the child, whose reintegration into the same household as the parent or guardian is, because of the serious ill-treatment or for other reasons, unlikely.]
- (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.

<sup>F25</sup>(5) . . . . .

### Textual Amendments

- F23** Words in s. 16(1)(a) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 34 (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F24** S. 16(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 10(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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**F25** S. 16(5) repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 10(b), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

## 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—

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- (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 [<sup>F26</sup>which is a local authority], an authorised court is satisfied in the case of each parent or guardian of the child that—
- (a) he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or
  - (b) his agreement to the making of an adoption order should be dispensed with on a ground specified in section 16(2),
- the court shall, subject to subsection (8), make an order declaring the child free for adoption.
- (2) No application shall be made under subsection (1) unless—
- (a) it is made with the consent of a parent or guardian of a child, or
  - (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.
- [<sup>F27</sup>(5) On the making of an order under this section, the parental responsibilities and parental rights in relation to the child are transferred to the adoption agency.]
- (6) Before making an order under this section, the court shall satisfy itself, in relation to each parent or guardian [<sup>F28</sup>of the child who can be found], that he has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.
- [<sup>F29</sup>(7) Before making an order under this section in the case of a child whose father is not, and has not been, married to the mother and does not have any parental responsibilities or parental rights in relation to the child, the court shall satisfy itself in relation to any person claiming to be the father that—



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- (a) he has no intention of applying for, or, if he did so apply, it is likely that he would be refused, an order under section 11 of the Children (Scotland) 1995 Act (orders in relation to parental responsibilities and parental rights); and
- (b) he has no intention of entering into an agreement with the mother under section 4(1) of that Act (acquisition by natural father by agreement of such responsibilities and rights), or, if he has such an intention, that no agreement under that subsection is likely to be made.]

[<sup>F30</sup>(8) An order under this section shall not be made in relation to a child of or over the age of 12 years unless with the child’s consent; except that where the court is satisfied that the child is incapable of giving his consent to the making of the order, it may dispense with that consent.]

[<sup>F31</sup>(9) Where a court making an order under this section in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.]

#### Textual Amendments

- F26** Words in s. 18(1) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F27** S. 18(5) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(b)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F28** Words in s. 18(6) substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 40**
- F29** S. 18(7) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(c)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F30** S. 18(8) substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), **ss. 2(3)(b)**, 11(2) (with s. 1(3))
- F31** S. 18(9) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(d)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

#### Modifications etc. (not altering text)

- C2** S. 18 restricted by S.I. 1984/988, **reg. 16**

## 19 Progress reports to former parent.

- (1) This section and section 20 apply to any person [<sup>F32</sup>(in this section and in section 20 referred to as the “relevant parent”)] who was required to be given an opportunity of making a declaration under section 18(6) but [<sup>F33</sup>either—
  - (a) did not do so; or
  - (b) having done so, subsequently by written notice under this subsection to the adoption agency to which the parental responsibilities and parental rights have been transferred, has withdrawn such declaration.]
- (2) Within the 14 days following the date 12 months after the making of the order under section 18, the adoption agency [<sup>F34</sup>to which the parental responsibilities and parental rights were transferred] on the making of the order, unless it has previously by notice to the [<sup>F35</sup>relevant] parent informed him that an adoption order has been made in respect of the child, shall by notice to the [<sup>F35</sup>relevant] parent inform him—
  - (a) whether an adoption order has been made in respect of the child, and (if not)



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- (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 [F36relevant] 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 [F36relevant] parent of the making of an adoption order (if and when made), and meanwhile to give the [F36relevant] parent notice whenever the child is placed for adoption or ceases to [F37be placed with a person with a view to his being adopted by that person].
- (4) If at any time [F38the relevant] parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—
- (a) the agency shall secure that the declaration is recorded by the court which made the order under section 18, and
- (b) the agency is released from the duty of complying further with subsection (3) as respects [F39that relevant] parent[F40but a declaration under this subsection may be withdrawn in the same way as may a declaration under subsection (6) of section 18, in which event the agency shall no longer be so released]

#### Textual Amendments

- F32** Words in s. 19(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F33** Words in s. 19(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F34** Words in s. 19(2) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(b)(i)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F35** Words in s. 19(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(b)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F36** Words in s. 19(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(c)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F37** Words in s. 19(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(c)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F38** Words in s. 19(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(d)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F39** Words in s. 19(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(d)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F40** Words in s. 19(4) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(d)(iii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

## 20 Revocation of s. 18 order.

- (1) The [F41relevant] 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 [F42responsibilities and parental rights].

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- [<sup>F43</sup>(1A) The adoption agency, at any time after the making of the order under section 18 when the conditions mentioned in paragraphs (a) and (b) of subsection (1) above are satisfied, may apply to the court which made the order for a further order revoking it.]
- (2) While [<sup>F44</sup>an application under subsection (1) or (1A)] is pending the adoption agency having the parental [<sup>F45</sup>responsibilities and parental rights] shall not place the child for adoption without the leave of the court.
- [<sup>F46</sup>(3) Where an order freeing a child for adoption is revoked under this section, the court shall, by an order under section 11 of the Children (Scotland) Act 1995 determine on whom are to be imposed the parental responsibilities, and to whom are to be given the parental rights, in relation to the child.]
- (4) Subject to subsection (5), [<sup>F47</sup>if an application under subsection (1)] is dismissed on the ground that to allow it would contravene the principle embodied in section 6—
- the [<sup>F48</sup>relevant] parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and
  - the adoption agency is released from the duty of complying further with section 19(3) as respects that parent.
- (5) Subsection (4)(a) shall not apply where the court which dismissed the application gives leave to the [<sup>F49</sup>relevant] parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

#### Textual Amendments

- F41** Word in s. 20(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F42** Words in s. 20(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(a)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F43** S. 20(1A) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F44** Words in s. 20(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(c)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F45** Words in s. 20(2) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(c)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F46** S. 20(3) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(d)** (with s. 103(1)) (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F47** Words in s. 20(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(e)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F48** Word in s. 20(4)(a) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(e)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F49** Word in s. 20(5) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(f)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

#### [<sup>F50</sup>21 Variation of section 18 order so as to substitute one adoption agency for another.

- (1) On an application to which this section applies an authorised court may vary an order under section 18 so as to transfer the parental [<sup>F51</sup>responsibilities and parental rights] relating to the child from the adoption agency [<sup>F52</sup>to which they are transferred by

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virtue of] the order (“the existing agency”:) to another adoption agency (“the substitute agency”:).

- (2) This section applies to any application made jointly by the existing agency and the would-be substitute agency.
- (3) Where an order under section 18 is varied under this section, section 19 shall apply as if the parental [<sup>F53</sup>responsibilities and parental rights] relating to the child had [<sup>F54</sup>been transferred to] the substitute agency on the making of the order.]

#### Textual Amendments

- F50** S. 21 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, **Sch. 10 para. 37** (with s. 108, Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F51** Words in s. 21(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(a)(i)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.**
- F52** Words in s. 21(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(a)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F53** Words in s. 21(3) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(b)(i)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.**
- F54** Words in s. 21(3) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(b)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.** (as amended by S.I. 1997/744, **arts. 2, 3**)

### Supplemental

## 22 Notification to local authority of adoption application.

- (1) An adoption order shall not be made in respect of a child who was not placed with the applicant by an adoption agency unless the applicant has, at least 3 months before the date of the order, given notice to the local authority within whose area he has his home of his intention to apply for the adoption order.
- (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 [<sup>F55</sup>receive] notice under subsection (1) in respect of a child whom the authority know to be in the care of another local authority shall, not more than 7 days after the receipt of the notice, inform that other local authority in writing that they have received the notice.

#### Textual Amendments

- F55** Word in s. 22(4) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para.38** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

#### Modifications etc. (not altering text)

- C3** S. 22 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. 1 paras. 2, 3

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## [<sup>F56</sup>22A Children subject to supervision requirements.

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

### Textual Amendments

**F56** S. 22A inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 15** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

### Modifications etc. (not altering text)

**C4** S. 22A modified (1.4.1997) by S.I. 1996/3266, **regs. 12(5), 13(2)**

## 23 Reports where child placed by agency.

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

### Modifications etc. (not altering text)

**C5** S. 23 excluded (transitionally) by S.I. 1984/1050, **art. 4, Sch. 1 paras. 2, 3**

## 24 Restrictions on making adoption orders.

- (1) The court shall not proceed to determine an application for an adoption order in relation to a child where a previous application for a British adoption order made in relation to the child by the same persons was refused by any court unless—
  - (a) in refusing the previous application the court directed that this subsection should not apply, or
  - (b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

[<sup>F57</sup>(2) The court may make an adoption order in relation to a child even where it is found that the applicants have, as respects the child, contravened section 51.

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- (3) In considering whether to make an adoption order or an order under section 18(1), the court shall regard the welfare of the child concerned as its paramount consideration and shall not make the order in question unless it considers that it would be better for the child that it should do so than that it should not.]

#### Textual Amendments

**F57** S. 24(2)(3) substituted for s. 24(2) (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 16** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

## 25 Interim orders.

- (1) Where on an application for an adoption order the requirements [ <sup>F58</sup>—  
(a) of section 16(1); and  
(b) in a case where the child was not placed with the applicant by an adoption agency, of section 22(1),  
are complied with] , the court may postpone the determination of the application and make an order [ <sup>F59</sup> giving parental responsibilities and parental rights to] the applicants for a probationary period not exceeding 2 years upon such terms for the aliment of the child and otherwise as the court thinks fit.
- (2) Where the probationary period specified in an order under subsection (1) is less than 2 years, the court may by a further order extend the period to a duration not exceeding 2 years in all.

#### Textual Amendments

**F58** Words in s. 25(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 17(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

**F59** Words in s. 25(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 17(b)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**

#### Modifications etc. (not altering text)

**C6** S. 25 excluded (transitionally) by S.I. 1984/1050, **art. 4**, **Sch. 1 paras. 2, 3, 6**

## [ <sup>F60</sup>25A Timetable for resolving question as to whether agreement to adoption order etc. should be dispensed with.

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

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

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**Textual Amendments**

**F60** S. 25A inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 18** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

<sup>F61</sup>**26** .....

**Textual Amendments**

**F61** S. 26 repealed (1.4.1997) by 1996 c. 25, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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