



Adoption (Scotland) Act 1978

1978 CHAPTER 28

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

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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

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- (b) any payment made by an adoption agency to another adoption agency in consideration of the placing of a child in the care and possession of any person with a view to the child's adoption ; or
 - (c) any payment made by an adoption agency to a voluntary organisation for the time being approved for the purposes of this paragraph by the Secretary of State as a fee for the services of that organisation in putting that adoption agency into contact with another adoption agency with a view to the making of arrangements between the adoption agencies for the adoption of a child.
- (5) 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.
- (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.

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- (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

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- (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;
- " 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.

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- (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.