



Adoption and Children Act 2002

2002 CHAPTER 38

PART 3

MISCELLANEOUS AND FINAL PROVISIONS

CHAPTER 2

FINAL PROVISIONS

140 Orders, rules and regulations

- (1) Any power to make subordinate legislation conferred by this Act on the Lord Chancellor, the Secretary of State, the Scottish Ministers, the Assembly or the Registrar General is exercisable by statutory instrument.
- (2) A statutory instrument containing subordinate legislation made under any provision of this Act (other than section 14 or 148 or an instrument to which subsection (3) applies) is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing subordinate legislation—
 - (a) under section 9 which includes provision made by virtue of section 45(2),
 - (b) under section 92(6), 94 or 123(6), or
 - (c) which adds to, replaces or omits any part of the text of an Act,is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (4) Subsections (2) and (3) do not apply to an Order in Council or to subordinate legislation made—
 - (a) by the Scottish Ministers, or
 - (b) by the Assembly, unless made jointly by the Secretary of State and the Assembly.

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- (5) A statutory instrument containing regulations under section 63(2) made by the Scottish Ministers is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (6) The power of the Department of Health, Social Services and Public Safety to make regulations under section 63(2) is to be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/ 1573 (N.I. 12)); and any such regulations are to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if they were statutory instruments within the meaning of that Act.
- (7) Subordinate legislation made under this Act may make different provision for different purposes.
- (8) A power to make subordinate legislation under this Act (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to—
 - (a) those cases subject to specified exceptions, or
 - (b) a particular case or class of case.
- (9) In this section, “subordinate legislation” does not include a direction.

141 Rules of procedure

- (1) The Lord Chancellor may make rules in respect of any matter to be prescribed by rules made by virtue of this Act and dealing generally with all matters of procedure.
- (2) Subsection (1) does not apply in relation to proceedings before magistrates' courts, but the power to make rules conferred by section 144 of the Magistrates' Courts Act 1980 (c. 43) includes power to make provision in respect of any of the matters mentioned in that subsection.
- (3) In the case of an application for a placement order, for the variation or revocation of such an order, or for an adoption order, the rules must require any person mentioned in subsection (4) to be notified—
 - (a) of the date and place where the application will be heard, and
 - (b) of the fact that, unless the person wishes or the court requires, the person need not attend.
- (4) The persons referred to in subsection (3) are—
 - (a) in the case of a placement order, every person who can be found whose consent to the making of the order is required under subsection (3)(a) of section 21 (or would be required but for subsection (3)(b) of that section) or, if no such person can be found, any relative prescribed by rules who can be found,
 - (b) in the case of a variation or revocation of a placement order, every person who can be found whose consent to the making of the placement order was required under subsection (3)(a) of section 21 (or would have been required but for subsection (3)(b) of that section),
 - (c) in the case of an adoption order—
 - (i) every person who can be found whose consent to the making of the order is required under subsection (2)(a) of section 47 (or would be required but for subsection (2)(c) of that section) or, if no such person can be found, any relative prescribed by rules who can be found,

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- (ii) every person who has consented to the making of the order under section 20 (and has not withdrawn the consent) unless he has given a notice under subsection (4)(a) of that section which has effect,
 - (iii) every person who, if leave were given under section 47(5), would be entitled to oppose the making of the order.
- (5) Rules made in respect of magistrates' courts may provide—
- (a) for enabling any fact tending to establish the identity of a child with a child to whom a document relates to be proved by affidavit, and
 - (b) for excluding or restricting in relation to any facts that may be so proved the power of a justice of the peace to compel the attendance of witnesses.

142 Supplementary and consequential provision

- (1) The appropriate Minister may by order make—
- (a) any supplementary, incidental or consequential provision,
 - (b) any transitory, transitional or saving provision,
- which he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) For the purposes of subsection (1), where any provision of an order extends to England and Wales, and Scotland or Northern Ireland, the appropriate Minister in relation to the order is the Secretary of State.
- (3) Before making an order under subsection (1) containing provision which would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, the appropriate Minister must consult the Scottish Ministers.
- (4) Subsection (5) applies to any power of the Lord Chancellor, the Secretary of State or the Assembly to make regulations, rules or an order by virtue of any other provision of this Act or of Her Majesty to make an Order in Council by virtue of section 125.
- (5) The power may be exercised so as to make—
- (a) any supplementary, incidental or consequential provision,
 - (b) any transitory, transitional or saving provision,
- which the person exercising the power considers necessary or expedient.
- (6) The provision which may be made under subsection (1) or (5) includes provision modifying Schedule 4 or amending or repealing any enactment or instrument.
- In relation to an Order in Council, “enactment” in this subsection includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.
- (7) The power of the Registrar General to make regulations under Chapter 5 of Part 1 may, with the approval of the Chancellor of the Exchequer, be exercised so as to make—
- (a) any supplementary, incidental or consequential provision,
 - (b) any transitory, transitional or saving provision,
- which the Registrar General considers necessary or expedient.

143 Offences by bodies corporate and unincorporated bodies

- (1) 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, secretary or other similar officer of the body, or a person purporting to act in any such capacity, that person as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director of a body corporate.
- (3) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings in England and Wales or Northern Ireland, any rules of court relating to the service of documents have effect as if that body were a corporation.
- (4) A fine imposed on an unincorporated body on its conviction of an offence under this Act is to be paid out of the funds of that body.
- (5) If an unincorporated body is charged with an offence under this Act—
 - (a) in England and Wales, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (procedure on charge of an offence against a corporation),
 - (b) in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (procedure on charge of an offence against a corporation),
 have effect in like manner as in the case of a corporation so charged.
- (6) Where an offence under this Act committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

144 General interpretation etc.

- (1) In this Act—
 - “appropriate Minister” means—
 - (a) in relation to England, Scotland or Northern Ireland, the Secretary of State,
 - (b) in relation to Wales, the Assembly,
 and in relation to England and Wales means the Secretary of State and the Assembly acting jointly,
 - “the Assembly” means the National Assembly for Wales,
 - “body” includes an unincorporated body,

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“by virtue of” includes “by” and “under”,

“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 on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993,

“Convention adoption order” means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c. 18) (regulations giving effect to the Convention), is made as a Convention adoption order,

“Convention country” means a country or territory in which the Convention is in force,

“court” means, subject to any provision made by virtue of Part 1 of Schedule 11 to the 1989 Act, the High Court, a county court or a magistrates' court,

“enactment” includes an enactment comprised in subordinate legislation,

“fee” includes expenses,

“guardian” has the same meaning as in the 1989 Act and includes a special guardian within the meaning of that Act,

“information” means information recorded in any form,

“local authority” means any unitary authority, or any county council so far as they are not a unitary authority,

“Northern Irish adoption agency” means an adoption agency within the meaning of Article 3 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)),

“Northern Irish adoption order” means an order made, or having effect as if made, under Article 12 of the Adoption (Northern Ireland) Order 1987,

“notice” means a notice in writing,

“registration authority” (in Part 1) has the same meaning as in the Care Standards Act 2000 (c. 14),

“regulations” means regulations made by the appropriate Minister, unless they are required to be made by the Lord Chancellor, the Secretary of State or the Registrar General,

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by marriage,

“rules” means rules made under section 141(1) or made by virtue of section 141(2) under section 144 of the Magistrates' Courts Act 1980 (c. 43),

“Scottish adoption order” means an order made, or having effect as if made, under section 12 of the Adoption (Scotland) Act 1978 (c. 28),

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30),

“unitary authority” means—

- (a) the council of any county so far as they are the council for an area for which there are no district councils,
- (b) the council of any district comprised in an area for which there is no county council,
- (c) the council of a county borough,
- (d) the council of a London borough,

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- (e) the Common Council of the City of London.
- (2) Any power conferred by this Act to prescribe a fee by Order in Council or regulations includes power to prescribe—
- (a) a fee not exceeding a prescribed amount,
 - (b) a fee calculated in accordance with the Order or, as the case may be, regulations,
 - (c) a fee determined by the person to whom it is payable, being a fee of a reasonable amount.
- (3) In this Act, “Scottish adoption agency” means—
- (a) a local authority, or
 - (b) a voluntary organisation providing a registered adoption service;
- but in relation to the provision of any particular service, references to a Scottish adoption agency do not include a voluntary organisation unless it is registered in respect of that service or a service which, in Scotland, corresponds to that service.
- Expressions used in this subsection have the same meaning as in the Regulation of Care (Scotland) Act 2001 (asp 4) and “registered” means registered under Part 1 of that Act.
- (4) In this Act, a couple means—
- (a) a married couple, or
 - (b) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.
- (5) Subsection (4)(b) does not include two people one of whom is the other’s parent, grandparent, sister, brother, aunt or uncle.
- (6) References to relationships in subsection (5)—
- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for adoption, and
 - (b) include the relationship of a child with his adoptive, or former adoptive, parents,
- but do not include any other adoptive relationships.
- (7) For the purposes of this Act, a person is the partner of a child’s parent if the person and the parent are a couple but the person is not the child’s parent.

145 Devolution: Wales

- (1) The references to the Adoption Act 1976 (c. 36) and to the 1989 Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) are to be treated as referring to those Acts as amended by virtue of this Act.
- (2) This section does not affect the power to make further Orders varying or omitting those references.
- (3) In Schedule 1 to that Order, in the entry for the Adoption Act 1976, “9” is omitted.
- (4) The functions exercisable by the Assembly under sections 9 and 9A of the Adoption Act 1976 (by virtue of paragraphs 4 and 5 of Schedule 4 to this Act) are to be treated for the purposes of section 44 of the Government of Wales Act 1998 (c. 38) (parliamentary

procedures for subordinate legislation) as if made exercisable by the Assembly by an Order in Council under section 22 of that Act.

146 Expenses

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown by virtue of this Act,
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

147 Glossary

Schedule 6 (glossary) is to have effect.

148 Commencement

- (1) This Act (except sections 116 and 136, this Chapter and the provisions mentioned in subsections (5) and (6)) is to come into force on such day as the Secretary of State may by order appoint.
- (2) Before making an order under subsection (1) (other than an order bringing paragraph 53 of Schedule 3 into force) the Secretary of State must consult the Assembly.
- (3) Before making an order under subsection (1) bringing sections 123 and 124 into force, the Secretary of State must also consult the Scottish Ministers and the Department of Health, Social Services and Public Safety.
- (4) Before making an order under subsection (1) bringing sections 125 to 131 into force, the Secretary of State must also consult the Scottish Ministers.
- (5) The following are to come into force on such day as the Scottish Ministers may by order appoint—
 - (a) section 41(5) to (9), so far as relating to Scotland,
 - (b) sections 132 to 134,
 - (c) paragraphs 21 to 35 and 82 to 84 of Schedule 3,
 - (d) paragraphs 15 and 23 of Schedule 4,
 - (e) the entries in Schedule 5, so far as relating to the provisions mentioned in paragraphs (c) and (d),
 - (f) section 139, so far as relating to the provisions mentioned in the preceding paragraphs.
- (6) Sections 2(6), 3(3) and (4), 4 to 17, 27(3), 53(1) to (3), 54, 56 to 65 and 98, paragraphs 13, 65, 66 and 111 to 113 of Schedule 3 and paragraphs 3 and 5 of Schedule 4 are to come into force on such day as the appropriate Minister may by order appoint.

149 Extent

- (1) The amendment or repeal of an enactment has the same extent as the enactment to which it relates.
- (2) Subject to that and to the following provisions, this Act except section 137 extends to England and Wales only.

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- (3) The following extend also to Scotland and Northern Ireland—
 - (a) sections 63(2) to (5), 65(2)(a) and (b) and (3), 123 and 124,
 - (b) this Chapter, except sections 141 and 145.
- (4) The following extend also to Scotland—
 - (a) section 41(5) to (9),
 - (b) sections 125 to 131,
 - (c) section 138,
 - (d) section 139, so far as relating to provisions extending to Scotland.
- (5) In Schedule 4, paragraph 23 extends only to Scotland.

150 Short title

This Act may be cited as the Adoption and Children Act 2002.