

## SCHEDULES

### SCHEDULE 4

Section 139

#### TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

##### *General rules for continuity*

- 1 (1) Any reference (express or implied) in Part 1 or any other enactment, instrument or document to—
- (a) any provision of Part 1, or
  - (b) things done or falling to be done under or for the purposes of any provision of Part 1,

must, so far as the nature of the reference permits, be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision repealed by this Act had effect, a reference to that corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision.

- (2) Any reference (express or implied) in any enactment, instrument or document to—
- (a) a provision repealed by this Act, or
  - (b) things done or falling to be done under or for the purposes of such a provision,

must, so far as the nature of the reference permits, be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision of Part 1 has effect, a reference to that corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision.

##### *General rule for old savings*

- 2 (1) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings.
- (2) The repeal by this Act of a saving made on the previous repeal of an enactment does not affect the operation of the saving in so far as it is not specifically reproduced in this Act but remains capable of having effect.

##### *Adoption support services*

- 3 (1) The facilities to be provided by local authorities as part of the service maintained under section 1(1) of the Adoption Act 1976 (c. 36) include such arrangements as the authorities may be required by regulations to make for the provision of adoption support services to prescribed persons.
- (2) Regulations under sub-paragraph (1) may require a local authority—

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- (a) at the request of a prescribed person, to carry out an assessment of his needs for adoption support services,
  - (b) if, as a result of the assessment, the authority decide that he has such needs, to decide whether to provide any such services to him,
  - (c) if the authority decide to provide any such services to a person, and the circumstances fall within a description prescribed by the regulations, to prepare a plan in accordance with which the services are to be provided to him and keep the plan under review.
- (3) Subsections (6) and (7) (except paragraph (a)) of section 4 of this Act apply to regulations under sub-paragraph (1) as they apply to regulations made by virtue of that section.
- (4) Section 57(1) of the Adoption Act 1976 (prohibited payments) does not apply to any payment made in accordance with regulations under sub-paragraph (1).

*Regulation of adoption agencies*

- 4 (1) In section 9 of the Adoption Act 1976—
- (a) for “Secretary of State” in subsections (2) and (3) there is substituted “appropriate Minister”, and
  - (b) at the end of that section there is inserted—
    - “(5) In this section and section 9A, “the appropriate Minister” means—
    - (a) in relation to England, the Secretary of State,
    - (b) in relation to Wales, the National Assembly for Wales,
    - and in relation to England and Wales, means the Secretary of State and the Assembly acting jointly.”
- (2) Until the commencement of the repeal by this Act of section 9(2) of the Adoption Act 1976, section 36A of the Care Standards Act 2000 (c. 14) (inserted by section 16 of this Act) is to have effect as if, after “2002”, there were inserted “or under section 9(2) of the Adoption Act 1976”.

*Independent review mechanism*

- 5 After section 9 of the Adoption Act 1976 (c. 36) there is inserted—

**“9A Independent review of determinations**

- (1) Regulations under section 9 may establish a procedure under which any person in respect of whom a qualifying determination has been made by an adoption agency may apply to a panel constituted by the appropriate Minister for a review of that determination.
- (2) The regulations must make provision as to the description of determinations which are qualifying determinations for the purposes of subsection (1).
- (3) The regulations may include provision as to—
  - (a) the duties and powers of a panel (including the power to recover the costs of a review from the adoption agency by which the determination reviewed was made),
  - (b) the administration and procedures of a panel,

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- (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment),
  - (d) the payment of expenses of members of a panel,
  - (e) the duties of adoption agencies in connection with reviews conducted under the regulations,
  - (f) the monitoring of any such reviews.
- (4) The appropriate Minister may make an arrangement with an organisation under which functions in relation to the panel are performed by the organisation on his behalf.
- (5) If the appropriate Minister makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by the appropriate Minister.
- (6) The arrangement may include provision for payments to be made to the organisation by the appropriate Minister.
- (7) Where the appropriate Minister is the National Assembly for Wales, subsections (4) and (6) also apply as if references to an organisation included references to the Secretary of State.
- (8) In this section, “organisation” includes a public body and a private or voluntary organisation.”

#### *Pending applications for freeing orders*

- 6 Nothing in this Act affects any application for an order under section 18 of the Adoption Act 1976 (freeing for adoption) where—
- (a) the application has been made and has not been disposed of immediately before the repeal of that section, and
  - (b) the child in relation to whom the application is made has his home immediately before that repeal with a person with whom he has been placed for adoption by an adoption agency.

#### *Freeing orders*

- 7 (1) Nothing in this Act affects any order made under section 18 of the Adoption Act 1976 (c. 36) and—
- (a) sections 19 to 21 of that Act are to continue to have effect in relation to such an order, and
  - (b) Part 1 of Schedule 6 to the Magistrates' Courts Act 1980 (c. 43) is to continue to have effect for the purposes of an application under section 21 of the Adoption Act 1976 in relation to such an order.
- (2) Section 20 of that Act, as it has effect by virtue of this paragraph, is to apply as if, in subsection (3)(c) after “1989” there were inserted—
- “(ia) any care order, within the meaning of that Act”.
- (3) Where a child is free for adoption by virtue of an order made under section 18 of that Act, the third condition in section 47(6) is to be treated as satisfied.

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*Pending applications for adoption orders*

- 8 Nothing in this Act affects any application for an adoption order under section 12 of the Adoption Act 1976 where—
- (a) the application has been made and has not been disposed of immediately before the repeal of that section, and
  - (b) the child in relation to whom the application is made has his home immediately before that repeal with a person with whom he has been placed for adoption by an adoption agency.

*Notification of adoption applications*

- 9 Where a notice given in respect of a child by the prospective adopters under section 22(1) of the Adoption Act 1976 is treated by virtue of paragraph 1(1) as having been given for the purposes of section 44(2) in respect of an application to adopt the child, section 42(3) has effect in relation to their application for an adoption order as if for “six months” there were substituted “twelve months”.

*Adoptions with a foreign element*

- 10 In section 13 of the Adoption Act 1976 (child to live with adopters before order is made)—
- (a) in subsection (1)(a), at the beginning there is inserted “(subject to subsection (1A))”,
  - (b) after subsection (1) there is inserted—
    - “(1A) Where an adoption is proposed to be effected by a Convention adoption order, the order shall not be made unless at all times during the preceding six months the child had his home with the applicants or one of them.”,
  - (c) in subsection (2), after “subsection (1)” there is inserted “or (1A)”,
  - (d) subsection (4) is omitted.
- 11 In section 56 of the Adoption Act 1976 (restriction on removal of children for adoption outside Great Britain)—
- (a) in subsection (1), “not being a parent or guardian or relative of the child” is omitted,
  - (b) at the end of that section there is inserted—
    - “(4) Regulations may provide for subsection (1) to apply with modifications, or not to apply, if—
      - (a) the prospective adopters are parents, relatives or guardians of the child in question (or one of them is), or
      - (b) the prospective adopter is a step-parent of the child, and any prescribed conditions are met.
    - (5) On the occasion of the first exercise of the power to make regulations under subsection (4)—
      - (a) the regulations shall not be made unless a draft of the regulations has been approved by a resolution of each House of Parliament, and
      - (b) accordingly section 67(2) does not apply to the statutory instrument containing the regulations.

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- (6) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Secretary of State, after consultation with the National Assembly for Wales.”

12 For section 56A of the Adoption Act 1976 (c. 36) there is substituted—

**“56A Restriction on bringing children into the United Kingdom**

(1) This section applies where a person who is habitually resident in the British Islands (the “British resident”)—

- (a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption by the British resident, or
- (b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of six months ending with that time.

The references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to a child adopted, by the British resident and another person.

- (2) But this section does not apply if the child is intended to be adopted under a Convention adoption order.
- (3) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outside the British Islands, whether or not the adoption is—
  - (a) an adoption within the meaning of Part IV of this Act, or
  - (b) a full adoption (within the meaning of section 39(3A)).
- (4) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—
  - (a) to apply to an adoption agency (including an adoption agency within the meaning of section 1 of the Adoption (Scotland) Act 1978 or Article 3 of the Adoption (Northern Ireland) Order 1987) in the prescribed manner for an assessment of his suitability to adopt the child, and
  - (b) to give the agency any information it may require for the purpose of the assessment.
- (5) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.
- (6) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may provide for any provision of Part II to apply with modifications or not to apply.
- (7) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, he is guilty of an offence if—

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- (a) he has not complied with any requirement imposed by virtue of subsection (4), or
  - (b) any condition required to be met by virtue of subsection (5) is not met,
- before that time, or before any later time which may be prescribed.
- (8) A person guilty of an offence under this section is liable—
- (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.
- (9) Regulations may provide for the preceding provisions of this section not to apply if—
- (a) the adopters or (as the case may be) prospective adopters are natural parents, natural relatives or guardians of the child in question (or one of them is), or
  - (b) the British resident in question is a step-parent of the child,
- and any prescribed conditions are met.
- (10) On the occasion of the first exercise of the power to make regulations under subsection (9)—
- (a) the regulations shall not be made unless a draft of the regulations has been approved by a resolution of each House of Parliament, and
  - (b) accordingly section 67(2) does not apply to the statutory instrument containing the regulations.
- (11) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Secretary of State, after consultation with the National Assembly for Wales.”
- 13 In section 72 of the Adoption Act 1976 (c. 36) (interpretation), subsection (3B) is omitted.

### *Advertising*

- 14 In section 58 of the Adoption Act 1976 (c. 36) (restrictions on advertisements)—
- (a) after subsection (1) there is inserted—
    - “(1A) Publishing an advertisement includes doing so by electronic means (for example, by means of the internet).”
  - (b) in subsection (2), for the words following “conviction” there is substituted “to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both”.
- 15 In section 52 of the Adoption (Scotland) Act 1978 (c. 28) (restriction on advertisements)—
- (a) after subsection (1) there is inserted—
    - “(1A) Publishing an advertisement includes doing so by electronic means (for example, by means of the internet).”

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- (b) in subsection (2), for the words following “conviction” there is substituted “to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both”.
- 16 (1) The Secretary of State may make regulations providing for the references to an adoption agency in—
- (a) section 58(1)(c) of the Adoption Act 1976, and
  - (b) section 52(1)(c) of the Adoption (Scotland) Act 1978,
- to include a prescribed person outside the United Kingdom exercising functions corresponding to those of an adoption agency, if the functions are being exercised in prescribed circumstances.
- “Prescribed” means prescribed by the regulations.
- (2) Before exercising the power conferred by sub-paragraph (1) in relation to the Adoption (Scotland) Act 1978, the Secretary of State must consult the Scottish Ministers.

#### *Status*

- 17 (1) Section 67—
- (a) does not apply to a pre-1976 instrument or enactment in so far as it contains a disposition of property, and
  - (b) does not apply to any public general Act in its application to any disposition of property in a pre-1976 instrument or enactment.
- (2) Section 73 applies in relation to this paragraph as if this paragraph were contained in Chapter 4 of Part 1; and an instrument or enactment is a pre-1976 instrument or enactment for the purposes of this Schedule if it was passed or made at any time before 1st January 1976.
- 18 Section 69 does not apply to a pre-1976 instrument.
- 19 In section 70(1), the reference to Part 3 of the Family Law Reform Act 1987 (c. 42) includes Part 2 of the Family Law Reform Act 1969 (c. 46).

#### *Registration of adoptions*

- 20 (1) The power of the court under paragraph 4(1) of Schedule 1 to amend an order on the application of the adopter or adopted person includes, in relation to an order made before 1st April 1959, power to make any amendment of the particulars contained in the order which appears to be required to bring the order into the form in which it would have been made if paragraph 1 of that Schedule had applied to the order.
- (2) In relation to an adoption order made before the commencement of the Adoption Act 1976 (c. 36), the reference in paragraph 4(3) of that Schedule to paragraph 1(2) or (3) is to be read—
- (a) in the case of an order under the Adoption of Children Act 1926 (c. 29), as a reference to section 12(3) and (4) of the Adoption of Children Act 1949 (c. 98),
  - (b) in the case of an order under the Adoption Act 1950 (c. 26), as a reference to section 18(3) and (4) of that Act,
  - (c) in the case of an order under the Adoption Act 1958 (c. 5), as a reference to section 21(4) and (5) of that Act.

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*The Child Abduction Act 1984 (c. 37)*

- 21 Paragraph 43 of Schedule 3 does not affect the Schedule to the Child Abduction Act 1984 in its application to a child who is the subject of—
- (a) an order under section 18 of the Adoption Act 1976 freeing the child for adoption,
  - (b) a pending application for such an order, or
  - (c) a pending application for an order under section 12 of that Act.

*The Courts and Legal Services Act 1990 (c. 41)*

- 22 Paragraph 80 of Schedule 3 does not affect section 58A(2)(b) of the Courts and Legal Services Act 1990 in its application to proceedings under the Adoption Act 1976 (c. 36).

*The Children (Scotland) Act 1995 (c. 36)*

- 23 Paragraph 84 of Schedule 3 does not affect section 86(6) of the Children (Scotland) Act 1995 in its application to a child who becomes the subject of an order under section 18 or 55 of the Adoption Act 1976 by virtue of an application made before the repeal of that section.