

2009 No. 2233

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

CHILDREN AND YOUNG PERSONS

The Adoption and Children (Scotland) Act 2007 (Consequential Provisions) (No. 1) Order 2009

Made - - - - - *13th August 2009*

Laid before Parliament *20th August 2009*

Coming into force - - *28th September 2009*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(4) of the Scotland Act 1998^(a).

Citation and commencement

1. This Order may be cited as the Adoption and Children (Scotland) Act 2007 (Consequential Provisions) (No. 1) Order 2009 and comes into force on 28th September 2009.

Savings provision: parental orders in relation to gamete donors

2. The repeal by section 120 of, and schedule 3 to, the Adoption (Scotland) Act 2007^(b) of provisions of the Adoption (Scotland) Act 1978^(c) does not affect the operation of those provisions for any of the purposes of subsections (9) and (10) of section 30 of the Human Fertilisation and Embryology Act 1990 (parental orders in favour of gamete donors)^(d) (which confer power to make regulations applying provisions of adoption law, with or without modifications, to parental orders under that section or applications for such orders and providing for the references to adoption etc. to be read as referring to the effect of a parental order etc.).

(a) 1998 c.46.

(b) 2007 asp 4.

(c) 1978 c.28.

(d) 1990 c.37. Section 30 was amended by the Adoption and Children Act 2002 (c.38) section 139 and Schedule 3, paragraphs 76 and 79 and is amended by the Adoption and Children (Scotland) Act 2007 (asp 4) section 120, schedule 2, paragraph 6 and schedule 3. It is prospectively repealed by the Human Fertilisation and Embryology Act 2008 (c. 22), sections 57 and 66 and Schedule 8. The Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994 (S.I. 1994/2804) apply, with modifications, provisions of the 1978 Act to parental orders made under section 30. The relevant provisions are cited in Schedule 1 of those Regulations.

ANN McKECHIN
Parliamentary Under Secretary of State
Scotland Office
Ministry of Justice

Dover House,
London
13th August 2009

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made in consequence of the Adoption and Children (Scotland) Act 2007 (“the 2007 Act”). The 2007 Act repeals and replaces the Adoption (Scotland) Act 1978 (“the 1978 Act”) with the exception of Part IV of that Act which concerns the status of adopted children.

Section 30 of the Human Fertilisation and Embryology Act 1990 allows a court to make a parental order in respect of a child who is born as the result of surrogacy but who is genetically related to at least one of the applicants for the order, who must be a married couple. The effect of the order is that the child will be treated in law as the child of the applicants. Section 30(9) of that Act enables regulations to provide that any provision of the 1978 Act, has effect with or without modifications, in relation to parental orders, or applications for such orders, as it has effect in relation to adoption and applications for adoption orders.

The Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994 apply, with modifications, provisions of the 1978 Act to parental orders and applications for parental orders.

This Order saves the provisions of the 1978 Act for any of the purposes of subsections (9) and (10) of section 30 of the Human Fertilisation and Embryology Act 1990.

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£4.00