



Adoption and Children (Scotland) Act 2007

2007 asp 4

PART 1

ADOPTION

CHAPTER 6

ADOPTIONS WITH A FOREIGN ELEMENT

Overseas adoptions etc.

67 Meaning of “overseas adoption”

- (1) In this Act, “overseas adoption”—
 - (a) means an adoption of a description specified in regulations made by the Scottish Ministers (being a description of adoptions effected under the law of any country or territory outwith the British Islands), but
 - (b) does not include a Convention adoption.
- (2) The Scottish Ministers may by regulations prescribe the requirements that ought to be met by an adoption of any description effected after the coming into force of the regulations for it to be an overseas adoption for the purposes of this Act.
- (3) At any time when regulations under subsection (2) are in force, the Scottish Ministers must exercise their power under subsection (1) so as to secure that adoptions of any description effected after the coming into force of the regulations are not overseas adoptions for the purposes of this Act if they consider that such adoptions are not likely, within a reasonable time, to meet the requirements prescribed under subsection (2).
- (4) Regulations under subsection (1) may contain provision as to the manner in which evidence of any overseas adoption may be given.
- (5) In this section, “adoption” means the adoption of a child or of a person who was a child at the time the adoption was applied for.

68 Annulment and recognition

- (1) The Court of Session may, on an application under this subsection, by order annul a Convention adoption or a Convention adoption order on the ground that the adoption or, as the case may be, order is contrary to public policy.
- (2) The Court of Session may, on an application under this subsection—
 - (a) order that an overseas adoption or a determination is to cease to be valid in Great Britain on the ground that the adoption or, as the case may be, determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case,
 - (b) decide the extent, if any, to which a determination has been affected by a subsequent determination.
- (3) The Court of Session may, in any proceedings in that court, decide that an overseas adoption or a determination is, for the purposes of those proceedings, to be treated as invalid in Great Britain on either of the grounds mentioned in subsection (2)(a).
- (4) An order or decision of the High Court on an application under section 89(2) of the 2002 Act is to be recognised and to have effect as if it were an order or decision of the Court of Session on an application under subsection (2).
- (5) Except as provided by this section, the validity of a Convention adoption, a Convention adoption order, an overseas adoption or a determination is not to be questioned in proceedings in any court in Scotland.
- (6) In this section “determination” means such a determination as is mentioned in section 70.

69 Section 68: supplementary provision

- (1) Any application for—
 - (a) an order under section 68, or
 - (b) a decision under subsection (2)(b) of that section,
 is to be made in the manner prescribed in regulations made by the Scottish Ministers and within such period as may be so prescribed.
- (2) No application is to be made under section 68(1) in respect of an adoption unless immediately before the application is made—
 - (a) the person adopted was habitually resident in Scotland, or
 - (b) the persons on whose application the adoption order was made were habitually resident there.
- (3) In deciding in pursuance of section 68 whether such an authority as is mentioned in section 70 was competent to hear a particular case, a court is to be bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to hear the case.

70 Effect of determinations and orders made outwith Scotland

- (1) Subsection (2) applies where—
 - (a) an authority of a Convention country (other than the United Kingdom) having power under the law of that country—

Status: This is the original version (as it was originally enacted).

- (i) to authorise, or review the authorisation of, a Convention adoption, or
 - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order, or
 - (b) an authority of a relevant territory having power under the law of that territory—
 - (i) to authorise, or review the authorisation of, a Convention adoption or an adoption effected in that territory, or
 - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order,makes a determination (“the relevant determination”) in the exercise of that power.
- (2) Subject to section 68 and any subsequent determination having effect under this subsection, the relevant determination has effect in Scotland for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination as the case may be.
- (3) In subsection (1), “relevant territory” means—
 - (a) any of the Channel Islands,
 - (b) the Isle of Man, or
 - (c) any British overseas territory (within the meaning of the British Nationality Act 1981 (c. 61)).
- (4) Section 35 applies in relation to an order under Article 17 (freeing child for adoption with parental agreement) or 18 (freeing child for adoption without parental agreement) of the Northern Ireland Order as if it were an adoption order.
- (5) Sections 35(2) and (3) and 43 apply in relation to a child who is the subject of an order which—
 - (a) is similar to an order under section 59, and
 - (b) is made (whether before or after this Act has effect) in a part of the British Islands,as those sections apply in relation to a child who is the subject of an adoption order.