



# Adoption Act 1976

## 1976 CHAPTER 36

### PART II

#### ADOPTION ORDERS

##### *The making of adoption orders*

## 12 Adoption orders

- (1) An adoption order is an order vesting the parental rights and duties relating to a child in the adopters, made on their application by an authorised court.
- (2) The order does not affect the parental rights and duties so far as they relate to any period before the making of the order.
- (3) The making of an adoption order operates to extinguish—
  - (a) any parental right or duty relating to the child which—
    - (i) is vested in a person (not being one of the adopters) who was the parent or guardian of the child immediately before the making of the order, or
    - (ii) is vested in any other person by virtue of the order of any court; and
  - (b) any duty arising by virtue of an agreement or the order of a court to make payments, so far as the payments are in respect of the child's maintenance for any period after the making of the order or any other matter comprised in the parental duties and relating to such a period.
- (4) Subsection (3)(b) does not apply to a duty arising by virtue of an agreement—
  - (a) which constitutes a trust, or
  - (b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.
- (5) An adoption order may not be made in relation to a child who is or has been married.
- (6) An adoption order may contain such terms and conditions as the court thinks fit.

- (7) An adoption order may be made notwithstanding that the child is already an adopted child.

### **13 Child to live with adopters before order made**

- (1) Where—
- (a) the applicant, or one of the applicants, is a parent, step-parent or relative of the child, or
  - (b) the child was placed with the applicants by an adoption agency or in pursuance of an order of the High Court,
- an adoption order shall not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the applicants or one of them.
- (2) Where subsection (1) does not apply, an adoption order shall not be made unless the child is at least 12 months old and at all times during the preceding 12 months had his home with the applicants or one of them.
- (3) An adoption order shall not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant, or, in the case of an application by a married couple, both applicants together in the home environment have been afforded—
- (a) where the child was placed with the applicant by an adoption agency, to that agency, or
  - (b) in any other case, to the local authority within whose area the home is.

### **14 Adoption by married couple**

- (1) Subject to section 37(1) of the Children Act 1975 (which provides for the making of a custodianship order instead of an adoption order in certain cases) an adoption order may be made on the application of a married couple where each has attained the age of 21 years but an adoption order shall not otherwise be made on the application of more than one person.
- (2) An adoption order shall not be made on the application of a married couple unless—
- (a) at least one of them is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
  - (b) the application is for a Convention adoption order and section 17 is complied with.
- (3) If the married couple consist of a parent and step-parent of the child, the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the Matrimonial Causes Act 1973.

### **15 Adoption by one person**

- (1) Subject to section 37(1) of the Children Act 1975 (which provides for the making of a custodianship order instead of an adoption order in certain cases) an adoption order may be made on the application of one person where he has attained the age of 21 years and—
- (a) is not married, or
  - (b) is married and the court is satisfied that—

- (i) his spouse cannot be found, or
  - (ii) the spouses have separated and are living apart, and the separation is likely to be permanent, or
  - (iii) his spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.
- (2) An adoption order shall not be made on the application of one person unless—
  - (a) he is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
  - (b) the application is for a Convention adoption order and section 17 is complied with.
- (3) An adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that—
  - (a) the other natural parent is dead or cannot be found, or
  - (b) there is some other reason justifying the exclusion of the other natural parent, and where such an order is made the reason justifying the exclusion of the other natural parent shall be recorded by the court.
- (4) If the applicant is a step-parent of the child, the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the Matrimonial Causes Act 1973.

## **16 Parental agreement**

- (1) An adoption order shall not be made unless—
  - (a) the child is free for adoption by virtue of an order made in England and Wales under section 18 or made in Scotland under section 14 of the Children Act 1975 (freeing children for adoption in Scotland); or
  - (b) in the case of each parent or guardian of the child the court is satisfied that—
    - (i) he freely, and with full understanding of what is involved, agrees unconditionally to the making of an adoption order (whether or not he knows the identity of the applicants), or
    - (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in subsection (2).
- (2) The grounds mentioned in subsection (1)(b)(ii) are that the parent or guardian—
  - (a) cannot be found or is incapable of giving agreement;
  - (b) is withholding his agreement unreasonably ;
  - (c) has persistently failed without reasonable cause to discharge the parental duties in relation to the child;
  - (d) has abandoned or neglected the child ;
  - (e) has persistently ill-treated the child ;
  - (f) has seriously ill-treated the child (subject to subsection (5)).
- (3) Subsection (1) does not apply in any case where the child is not a United Kingdom national and the application for the adoption order is for a Convention adoption order.
- (4) Agreement is ineffective for the purposes of subsection (1)(b)(i) if given by the mother less than six weeks after the child's birth.

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

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- (5) Subsection (2)(f) does not apply unless (because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of the parent or guardian is unlikely.

## **17 Convention adoption orders**

- (1) An adoption order shall be made as a Convention adoption order if the application is for a Convention adoption order and the following conditions are satisfied both at the time of the application and when the order is made.
- (2) The child—
  - (a) must be a United Kingdom national or a national of a Convention country, and
  - (b) must habitually reside in British territory or a Convention country.
- (3) The applicant or applicants and the child must not all be United Kingdom nationals living in British territory.
- (4) If the application is by a married couple, either—
  - (a) each must be a United Kingdom national or a national of a Convention country, and both must habitually reside in Great Britain, or
  - (b) both must be United Kingdom nationals, and each must habitually reside in British territory or a Convention country,and if the applicants are nationals of the same Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.
- (5) If the application is by one person, either—
  - (a) he must be a national of a Convention country, and must habitually reside in Great Britain, or
  - (b) he must be a United Kingdom national and must habitually reside in British territory or a Convention country,and if he is a national of a Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.
- (6) If the child is not a United Kingdom national the order shall not be made—
  - (a) except in accordance with the provisions, if any, relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national, and
  - (b) unless the court is satisfied that each person who consents to the order in accordance with that internal law does so with full understanding of what is involved.
- (7) The reference to consents and consultations in subsection (6) does not include a reference to consent by and consultation with the applicant and members of the applicant's family (including his or her spouse), and for the purposes of subsection (6) consents may be proved in the manner prescribed by rules and the court shall be treated as the authority by whom, under the law mentioned in subsection (6), consents may be dispensed with and the adoption in question may be effected; and where the provisions there mentioned require the attendance before that authority of any person who does not reside in Great Britain, that requirement shall be treated as satisfied for the purposes of subsection (6) if—

- (a) that person has been given a reasonable opportunity of communicating his opinion on the adoption in question to the proper officer or clerk of the court, or to an appropriate authority of the country in question, for transmission to the court; and
  - (b) where he has availed himself of that opportunity, his opinion has been transmitted to the court.
- (8) In subsections (4) and (5) " specified provision " means a provision specified in an order of the Secretary of State as one notified to the Government of the United Kingdom in pursuance of the provisions of the Convention which relate to prohibitions on an adoption contained in the national law of the Convention country in question.