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Adoption (Scotland) Act 1978

1978 CHAPTER 28

An Act to consolidate the enactments relating to adoption in Scotland with amendments to give effect to recommendations of the Scottish Law Commission. [20th July 1978]

Modifications etc. (not altering text)

C1 Power to amend Act conferred (*prosp.*) by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), **ss. 30(9)(10)**, 39(3), 43(2), 49(2)

PART I

THE ADOPTION SERVICE

The Adoption Service

1 Establishment of Adoption Service.

(1) It is the duty of every local authority to establish and maintain within their area a service designed to meet the needs, in relation to adoption, of—

(a) children who have been or may be adopted;

(b) parents and guardians of such children; and

(c) persons who have adopted or may adopt a child;

and for that purpose to provide the requisite facilities, or secure that they are provided by approved adoption societies.

(2) The facilities to be provided as part of the service maintained under subsection (1) include—

(a) temporary board and lodging where needed by pregnant women, mothers or children;

(b) arrangements for assessing children and prospective adopters, and placing children for adoption;

(c) counselling for persons with problems relating to adoption.

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(3) The facilities of the service maintained under subsection (1) shall be provided in conjunction with the local authority's other social services and with approved adoption societies in their area, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.

(4) The services maintained by local authorities under subsection (1) may be collectively referred to as ":the Scottish Adoption Service":, and a local authority or approved adoption society may be referred to as an adoption agency.

2 Local authorities' social work.

The social services referred to in section 1(3) are the functions of a local authority which stand referred to the authority's social work committee, including, in particular but without prejudice to the generality of the foregoing, a local authority's functions relating to—

(a) the promotion of the welfare of children by diminishing the need to receive children into care or keep them in care, including (in exceptional circumstances) the giving of assistance in cash;

(b) the welfare of children in the care of a local authority;

(c) the welfare of children who are foster children within the meaning of **[**[F1]the Foster Children (Scotland) Act 1984**]**;

(d) children who are subject to supervision orders made in matrimonial or custody proceedings;

(e) the provision of residential accommodation for expectant mothers and young children and of day-care facilities;

(f) the regulation and inspection of nurseries and child minders;

(g) care and other treatment of children through court proceedings and children's hearings.

Textual Amendments

F1 Words substituted by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), ss. 22, 23, **Sch. 2 para. 6**

Adoption societies

3 Approval of adoption societies.

(1) Subject to regulations under section 9(1), a body **[**[F2]which is a voluntary organisation and desires**]**to act as an adoption society or, if it is already an adoption society, **[**[F2]desires**]** to continue to act as such may, in the manner specified by regulations made by the Secretary of State, apply to the Secretary of State for his approval to its doing so.

(2) On an application under subsection (1), the Secretary of State shall take into account the matters relating to the applicant specified in subsections (3) to (5) and any other relevant considerations, and if, but only if, he is satisfied that the applicant is likely to make, or, if the applicant is an approved adoption society, is making, an effective contribution to the Scottish Adoption Service, he shall by notice to the applicant give his approval, which shall be operative from a date specified in the notice or, in the case of a renewal of approval, from the date of the notice.

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(3) In considering the application, the Secretary of State shall have regard, in relation to the period for which approval is sought, to the following—

(a) the applicant's adoption programme, including, in particular, its ability to make provision for children who are free for adoption,

(b) the number and qualifications of its staff,

(c) its financial resources, and

(d) the organisation and control of its operations.

(4) Where it appears to the Secretary of State that the applicant is likely to operate extensively within the area of a particular local authority he shall ask the authority whether they support the application, and shall take account of any views about it put to him by the authority.

(5) Where the applicant is already an approved adoption society or, whether before or after the passing of this Act, previously acted as an adoption society, the Secretary of State, in considering the application, shall also have regard to the record and reputation of the applicant in the adoption field, and the areas within which and the scale on which it is currently operating or has operated in the past.

(6) If after considering the application the Secretary of State is not satisfied that the applicant is likely to make or, as the case may be, is making an effective contribution to the Scottish Adoption Service, the Secretary of State shall, subject to section 5(1) and (2), by notice inform the applicant that its application is refused.

(7) If not withdrawn earlier under section 4, approval given under this section shall last for a period of three years from the date on which it becomes operative, and shall then expire or, in the case of an approved adoption society whose further application for approval is pending at that time, shall expire on the date that application is granted or, as the case may be, refused.

Textual Amendments

F2 Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 38(a)(b)**

4 Withdrawal of approval.

(1) If, while approval of a body under section 3 is operative, it appears to the Secretary of State that the body is not making an effective contribution to the Scottish Adoption Service he shall, subject to section 5(3) and (4), by notice to the body withdraw the approval from a date specified in the notice.

(2) If an approved adoption society fails to provide the Secretary of State with information required by him for the purpose of carrying out his functions under subsection (1), or fails to verify such information in the manner required by him, he may by notice to the society withdraw the approval from a date specified in the notice.

(3) Where approval is withdrawn under subsection (1) or (2) or expires the Secretary of State may direct the body concerned to make such arrangements as to children who are in its care and other transitional matters as seem to him expedient.

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5 Procedure on refusal to approve, or withdrawal of approval from, adoption societies.

(1) Before notifying a body which has applied for approval that the application is refused in accordance with section 3(6) the Secretary of State shall serve on the applicant a notice—
  (a) setting out the reasons why he proposes to refuse the application;
  (b) informing the applicant that it may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.

(2) If any representations are made by the applicant in accordance with subsection (1), the Secretary of State shall give further consideration to the application taking into account those representations.

(3) The Secretary of State shall, before withdrawing approval of an adoption society in accordance with section 4(1), serve on the society a notice—
  (a) setting out the reasons why he proposes to withdraw the approval; and
  (b) informing the society that it may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.

(4) If any representations are made by the society in accordance with subsection (3), the Secretary of State shall give further consideration to the withdrawal of approval under section 4(1) taking into account those representations.

(5) This section does not apply where the Secretary of State, after having considered any representations made by the applicant in accordance with this section, proposes to refuse approval or, as the case may be, to withdraw approval for reasons which have already been communicated to the applicant in a notice under this section.

Welfare of children

6 Duty to promote welfare of child.

In reaching any decision relating to the adoption of a child, a court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

VALID FROM 01/04/1997

[F3 6A Duty to consider alternatives to adoption.

In complying with its duties under section 6 of this Act, an adoption agency shall, before making any arrangements for the adoption of a child, consider whether adoption is likely best to meet the needs of that child or whether for him there is some better, practicable, alternative; and if it concludes that there is such an alternative it shall not proceed to make those arrangements.**]**

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Textual Amendments

F3 S. 6A inserted (1.4.1997) by 1995 c. 36, **s. 96** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2**, 3)

Modifications etc. (not altering text)

C2 S. 6A applied (1.4.1997) by S.I. 1996/3266, **reg. 11(5)**

7 Religious upbringing of adopted child.

An adoption agency shall in placing a child for adoption have regard (so far as is practicable) to any wishes of the child's parents and guardians as to the religious upbringing of the child.

Modifications etc. (not altering text)

C3 S. 7 applied (1.4.1997) by S.I. 1996/3266, **reg. 11(5)**

Supplemental

8 Inactive or defunct adoption societies.

(1) If it appears to the Secretary of State that an approved adoption society, or one in relation to which approval has been withdrawn under section 4 or has expired, is inactive or defunct he may, in relation to any child who is or was in the care of the society, direct what appears to him to be the appropriate local authority to take any such action as might have been taken by the society or by the society jointly with the authority; and if apart from this section the authority would not be entitled to take that action, or would not be entitled to take it without joining the society in the action, it shall be entitled to do so.

(2) Before giving a direction under subsection (1) the Secretary of State shall, if practicable, consult both the society and the authority.

9 Regulation of adoption agencies.

(1) The Secretary of State may by regulations prohibit unincorporated bodies from applying for approval under section 3; and he shall not approve any unincorporated body whose application is contrary to regulations made under this subsection.

(2) The Secretary of State may make regulations for any purpose relating to the exercise of its functions by an approved adoption society.

(3) The Secretary of State may make regulations with respect to the exercise by local authorities of their functions of making or participating in arrangements for the adoption of children.

(4) Any person who contravenes or fails to comply with regulations made under subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

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(5) Regulations under this section may make different provisions in relation to different cases or classes of cases and may exclude certain cases or classes of cases.

10 . . . . . [F4]

Textual Amendments

F4 S. 10 repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 9, 30, Sch. 2 para. 39, **Sch. 10 Pt. I**

11 Restriction on arranging adoptions and placing of children.

(1) A person other than an adoption agency shall not make arrangements for the adoption of a child, or place a child for adoption, unless the proposed adopter is a relative of the child.

[[F5X1](2) An adoption society approved as respects England and Wales under section 3 of the [M1]Adoption Act 1976, but which is not approved under section 3 of this Act, shall not act as an adoption society in Scotland except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 1 of that Act.**]**

[[F5X1](2) An adoption society which is—

(a) approved as respects England and Wales under section 3 of the Adoption Act [M2]1976: or

(b) registered as respects Northern Ireland under Article 4 of the Adoption (Northern Ireland) Order [M3]1987,

but which is not approved under section 3 of this Act, shall not act as an adoption society in Scotland except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 1 of that Act or, as the case may be, Article 3 of that Order.**]**

(3) A person who—

(a) takes part in the management or control of a body of persons which exists wholly or partly for the purpose of making arrangements for the adoption of children and which is not an approved adoption society or a local authority; or

(b) contravenes subsection (1); or

(c) receives a child placed with him in contravention of subsection (1),

shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both.

(4) In any proceedings for an offence under paragraph (a) of subsection (3), proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the management or control of a body of persons, or in making arrangements for the adoption of children on behalf of the body, shall be sufficient evidence of the purpose for which that body exists.

(5) Section 26 shall apply where a person is convicted of a contravention of subsection (1) as it applies where an application for an adoption order is refused.

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Editorial Information

X1 S. 11(2) beginning "An adoption society which" substituted (*prosp.*) for s. 11(2) beginning "An adoption society approved" by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 32 (with **Sch. 14 para. 1(1)**)

Textual Amendments

F5 S. 11(2) beginning "An adoption society which" substituted (*prosp.*) for s. 11(2) beginning "An adoption society approved" by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 32 (with **Sch. 14 para. 1(1)**)

Marginal Citations

M1 1976 c. 36.
M2 1976 c.36 (**49:11**).
M3 S.I. 1987/2203 (N.I. 22).

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 immediately before the making of the order was vested in a person (not being one of the adopters) who was—

(i) a parent of the child, or

(ii) a tutor, curator or other guardian of the child appointed by a deed or by the order of a court;

(b) any duty owed to or by the child—

(i) to pay or provide aliment in respect of any period occurring after the making of the order;

(ii) to make any payment arising out of parental rights and duties in respect of such a period.

(4) Nothing in subsection (3) shall—

(a) extinguish any duty arising under a deed or agreement which constitutes a trust or which expressly provides that the duty is not to be extinguished by the making of an adoption order;

(b) of itself terminate the appointment or functions of any judicial factor loco tutoris or curator bonis appointed to administer the whole or any part of the child's estate.

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(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.

(8) An adoption order shall not be made in relation to a child who is a minor unless with the consent of the minor; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.

13 Child to live with adopters before order made.

(1) Where the applicant, or one of the applicants, is a parent, step-parent or relative of the child, or the child was placed with the applicants by an adoption agency, 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.

Modifications etc. (not altering text)

C4 S. 13 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. paras. 2, **3**

14 Adoption by married couple.

[F6X2(1) Subject to section 53(1) of the M4Children Act 1975 (which provides for the making of a custody 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.]

[F6X2(1) Subject to section 53(1) of the M5Children Act 1975 (which provides for the making of a custody order instead of an adoption order in certain cases), an adoption order shall not be made on the application of more than one person except in the circumstances specified in subsections (1A) and (1B).

(1A) An adoption order may be made on the application of a married couple where both the husband and the wife have attained the age of 21 years.

(1B) An adoption order may be made on the application of a married couple where—

(a) the husband or the wife—

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(i) is the father or mother of the child; and
(ii) has attained the age of 18 years; and
(b) his or her spouse has attained the age of 21 years.**]**

(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.

Editorial Information

X2 S. 14(1)–(1B) ending "of 21 years": substituted (*prosp.*) for s. 14(1) ending "one person": by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 33 (with **Sch. 14 para. 1(1)**)

Textual Amendments

F6 S. 14(1)–(1B) ending "of 21 years": substituted (*prosp.*) for s. 14(1) ending "one person": by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 33 (with **Sch. 14 para. 1(1)**)

Marginal Citations

M4 1975 c. 72.
M5 1975 c.72 (**49:10**).

15 Adoption by one person.

(1) Subject to section 53(1) of the [M6]Children Act 1975 (which provides for the making of a custody 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 **[**[F7]or, by virtue of section 28 of the Human Fertilisation and Embryology Act 1990, there is no other parent**]**, 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.

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Textual Amendments

F7 Words inserted (1.8.1991) by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), ss. 39(3), 43(2), 49(5), **Sch. 4 para. 6**

Marginal Citations

M6 1975 c. 72.

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 **[**[F8]in England and Wales under section 18 of the [M7]Adoption Act 1976 and not revoked, or made in Scotland under section 18 and not revoked**]**

[[F8](i) in Scotland under section 18;

(ii) in England and Wales under section 18 of the Adoption Act 1976; or

(iii) in Northern Ireland under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987,

and not revoked**]**; 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.

(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.

Textual Amendments

F8 S. 16(1)(*a*)(i)–(iii) and words following substituted (*prosp.*) for words beginning "in England": by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 34 (with **Sch. 14 para. 1(1)**)

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Marginal Citations
M7 1976 c. 36.

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, and
- (c) must not be, or have been, married.

(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 United Kingdom national or 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 act of sederunt 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—

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(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.

Freeing for adoption

18 Freeing child for adoption.

(1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of the child that—

(a) he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or

(b) his agreement to the making of an adoption order should be dispensed with on a ground specified in section 16(2),

the court shall, subject to subsection (8), make an order declaring the child free for adoption.

(2) No application shall be made under subsection (1) unless—

(a) it is made with the consent of a parent or guardian of a child, or

(b) the adoption agency is applying for dispensation under subsection (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the adoption agency.

(3) No agreement required under subsection (1)(a) shall be dispensed with under subsection (1)(b) unless the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.

(4) An agreement by the mother of the child is ineffective for the purposes of this section if given less than 6 weeks after the child's birth.

(5) On the making of an order under this section, the parental rights and duties relating to the child vest in the adoption agency, and subsections (2) **[**[F9]and (3)**][**[F9]to (4)**]** of section 12 apply as if the order were an adoption order and the agency were the adopters.

(6) Before making an order under this section, the court shall satisfy itself, in relation to each parent or guardian **[**[F10]of the child who can be found**]**, that he has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.

(7) Before making an order under this section in the case of **[**[F11]a child whose father is not married to the mother and who does not have any parental right in relation to the child**]**, the court shall satisfy itself in relation to any person claiming to be the father that either—

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[[F12](a) he has no intention of applying for any parental right under section 3 of the Law Reform (Parent and Child) (Scotland) Act 1986, or

(b) if he did apply for any parental right under that section the application would be likely to be refused.**]**

(8) An order under this section shall not be made in relation to a child who is a minor unless with the consent of the child; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.

Textual Amendments

F9 Words "to (4)": substituted (*prosp.*) for words "and (3)": by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 35 (with **Sch. 14 para. 1(1)**)

F10 Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 40**

F11 Words substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), **ss. 10(1)**, 11(4) Sch. 1 para. 18(1)

F12 S. 18(7)(*a*)(*b*) substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(1), 11(4), **Sch. 1 para. 18(1)**

Modifications etc. (not altering text)

C5 S. 18 restricted by S.I. 1984/988, **reg. 16**

19 Progress reports to former parent.

(1) This section and section 20 apply to any person ("the former parent":) who was required to be given an opportunity of making a declaration under section 18(6) but did not do so.

(2) Within the 14 days following the date 12 months after the making of the order under section 18, the adoption agency in which the parental rights and duties were vested on the making of the order, unless it has previously by notice to the former parent informed him that an adoption order has been made in respect of the child, shall by notice to the former parent inform him—

(a) whether an adoption order has been made in respect of the child, and (if not)

(b) whether the child has his home with a person with whom he has been placed for adoption.

(3) If at the time when the former parent is given notice under subsection (2) an adoption order has not been made in respect of the child, it is thereafter the duty of the adoption agency to give notice to the former parent of the making of an adoption order (if and when made), and meanwhile to give the former parent notice whenever the child is placed for adoption or ceases to have his home with a person with whom he has been placed for adoption.

(4) If at any time the former parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—

(a) the agency shall secure that the declaration is recorded by the court which made the order under section 18, and

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(b) the agency is released from the duty of complying further with subsection (3) as respects that former parent.

20 Revocation of s. 18 order.

(1) The former parent, at any time more than 12 months after the making of the order under section 18 when—

(a) no adoption order has been made in respect of the child, and

(b) the child does not have his home with a person with whom he has been placed for adoption,

may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume the parental rights and duties.

(2) While the application is pending the adoption agency having the parental rights and duties shall not place the child for adoption without the leave of the court.

(3) Where an order freeing a child for adoption is revoked under this section—

(a) the parental rights and duties relating to the child are vested in the individual or, as the case may be, the individuals in whom they vested immediately before that order was made;

(b) if the parental rights and duties, or any of them, vested in a local authority or voluntary organisation immediately before the order freeing the child for adoption was made, those rights and duties are vested in the individual or, as the case may be, the individuals in whom they vested immediately before they were vested in the authority or organisation; and

(c) any duty extinguished by virtue of **[**[F13]section 12(3)(b) of the Adoption Act 1976 or of**]** section 12(3)(b) is forthwith revived,

but the revocation does not affect any right or duty so far as it relates to any period before the date of the revocation.

(4) Subject to subsection (5), if the application is dismissed on the ground that to allow it would contravene the principle embodied in section 6—

(a) the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and

(b) the adoption agency is released from the duty of complying further with section 19(3) as respects that parent.

(5) Subsection (4)(a) shall not apply where the court which dismissed the application gives leave to the former parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

Textual Amendments

F13 Words repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 36, Sch. 15 (with Sch. 14 para. 1(1), **27(4)**)

[[F14X3]**21 Transfer of parental rights and duties between adoption agencies.**

On the joint application of an adoption agency in which the parental rights and duties relating to a child who is in Scotland are vested under section 18(5) or this section or

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under section 18(5) or 21 of the [M8]Adoption Act 1976, and any other adoption agency, an authorised court may if it thinks fit by order transfer the parental rights and duties to the latter agency.**]**

Editorial Information

X3 S. 21 beginning "On an application": substituted (*prosp.*) for S. 21 beginning "On the joint application": by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 37 (with s. 108, **Sch. 14 para. 1(1)**)

Textual Amendments

F14 S. 21 beginning "On an application": substituted (*prosp.*) for S. 21 beginning "On the joint application": by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 37 (with s. 108, **Sch. 14 para. 1(1)**)

Marginal Citations

M8 1976 c. 36.

[[F15X4]21 Variation of section 18 order so as to substitute one adoption agency for another.

(1) On an application to which this section applies an authorised court may vary an order under section 18 so as to transfer the parental rights and duties relating to the child from the adoption agency in which they are vested under the order ("the existing agency":) to another adoption agency ("the substitute agency":).

(2) This section applies to any application made jointly by the existing agency and the would-be substitute agency.

(3) Where an order under section 18 is varied under this section, section 19 shall apply as if the parental rights and duties relating to the child had vested in the substitute agency on the making of the order.**]**

Editorial Information

X4 S. 21 beginning "On an application": substituted (*prosp.*) for S. 21 beginning "On the joint application": by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 37 (with s. 108, **Sch. 14 para. 1(1)**)

Textual Amendments

F15 S. 21 beginning "On an application": substituted (*prosp.*) for s. 21 beginning "On the joint application": by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 37 (with s. 108, **Sch. 14 para. 1(1)**)

Supplemental

22 Notification to local authority of adoption application.

(1) An adoption order shall not be made in respect of a child who was not placed with the applicant by an adoption agency unless the applicant has, at least 3 months before the date of the order, given notice to the local authority within whose area he has his home of his intention to apply for the adoption order.

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(2) On receipt of such a notice the local authority shall investigate the matter and submit to the court a report of their investigation.

(3) Under subsection (2), the local authority shall in particular investigate,—

(a) so far as is practicable, the suitability of the applicant, and any other matters relevant to the operation of section 6 in relation to the application; and

(b) whether the child was placed with the applicant in contravention of section 11.

(4) A local authority which **[**[F16]receives**]**[[F16]receive**]** notice under subsection (1) in respect of a child whom the authority know to be in the care of another local authority shall, not more than 7 days after the receipt of the notice, inform that other local authority in writing that they have received the notice.

Textual Amendments

F16 Word "receive": substituted (*prosp.*) for word "receives": by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 38 (with **Sch. 14 para. 1(1)**)

Modifications etc. (not altering text)

C6 S. 22 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. 1 paras. 2, **3**

VALID FROM 01/04/1997

[[F17]**22A Children subject to supervision requirements.**

(1) An approved adoption society shall refer the case of a child who is subject to a supervision requirement to the Principal Reporter where it is satisfied that the best interests of the child would be served by its placing the child for adoption and it intends so to place him.

(2) On a case being referred to him under subsection (1), the Principal Reporter shall arrange for a children's hearing to review the supervision requirement in question and shall make any arrangements incidental to that review.

(3) Subsections (9), (13) and (14) of section 73 of the Children (Scotland) Act 1995 (which provide, respectively, for acting on the review of a supervision requirement, a report by a children's hearing and consideration of that report) shall apply in relation to a children's hearing arranged under this section as those subsections apply in relation to one arranged by virtue of subsection (4)(c)(iii) of that section.

(4) In this section "Principal Reporter" has the same meaning as in Part II of the Children (Scotland) Act 1995.**]**

Textual Amendments

F17 S. 22A inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 15** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2**, 3)

Modifications etc. (not altering text)

C7 S. 22A modified (1.4.1997) by S.I. 1996/3266, **regs. 12(5)**, 13(2)

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23 Reports where child placed by agency.

Where an application for an adoption order relates to a child placed by an adoption agency, the agency shall submit to the court a report on the suitability of the applicants and any other matters relevant to the operation of section 6, and shall assist the court in any manner the court may direct.

Modifications etc. (not altering text)

C8 S. 23 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. 1 paras. 2, **3**

24 Restrictions on making adoption orders.

(1) The court shall not proceed to determine an application for an adoption order in relation to a child where a previous application for a British adoption order made in relation to the child by the same persons was refused by any court unless—

(a) in refusing the previous application the court directed that this subsection should not apply, or

(b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

(2) The court shall not make an adoption order in relation to a child unless it is satisfied that the applicants have not, as respects the child, **[**[F18]contravened**]** section 51.

Textual Amendments

F18 Word substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 41**

25 Interim orders.

(1) Where on an application for an adoption order the requirements of sections 16(1) and 22(1) are complied with, the court may postpone the determination of the application and make an order vesting the custody of the child in the applicants for a probationary period not exceeding 2 years upon such terms for the aliment of the child and otherwise as the court thinks fit.

(2) Where the probationary period specified in an order under subsection (1) is less than 2 years, the court may by a further order extend the period to a duration not exceeding 2 years in all.

Modifications etc. (not altering text)

C9 S. 25 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. 1 paras. 2, 3, **6**

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VALID FROM 01/04/1997

[F19 25A Timetable for resolving question as to whether agreement to adoption order etc. should be dispensed with.

In proceedings in which the question arises as to whether the court is satisfied as is mentioned in section 16(1)(b)(ii) or 18(1)(b), the court shall, with a view to determining the question without delay—

(a) draw up a timetable specifying periods within which certain steps must be taken in relation to those proceedings; and

(b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.**]**

Textual Amendments

F19 S. 25A inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 18** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2**, 3)

26 Care etc. of child on refusal of adoption order.

(1) Where on an application for an adoption order in relation to a child under the age of 16 years the court refuses to make the adoption order then—

(a) if it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a specified local authority;

(b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual, the court may by order commit the child to the care of a specified local authority.

(2) Where the court makes an order under subsection (1)(b), the order may require the payment by either parent to the local authority, while it has the care of the child, of such weekly or other periodical sum towards the aliment of the child as the court thinks reasonable.

(3) Subsections (2), (4) and (5) of section 11 of the [M9]Guardianship Act 1973 (jurisdiction and orders relating to care and custody of children) apply in relation to an order under this section as they apply in relation to an order under that section.

Marginal Citations

M9 1973 c. 29.

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PART III

CARE AND PROTECTION OF CHILDREN AWAITING ADOPTION

Restrictions on removal of children

27 Restrictions on removal where adoption agreed or application made under s. 18.

(1) While an application for an adoption order is pending in a case where a parent or guardian of the child has agreed to the making of the adoption order (whether or not he knows the identity of the applicant), the parent or guardian is not entitled, against the will of the person with whom the child has his home, to remove the child from the **[**[F20]care and possession**]** of that person except with the leave of the court.

(2) While an application is pending for an order freeing a child for adoption and—

(a) the child is in the care of the adoption agency making the application, and

(b) the application was not made with the consent of each parent or guardian of the child,

no parent or guardian of the child who did not consent to the application is entitled, against the will of the person with whom the child has his home, to remove the child from the **[**[F20]care and possession**]** of that person except with the leave of the court.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

(4) . . . . . [F21]

(5) . . . . . [F21]

Textual Amendments

F20 Words substituted by Health and Social Services and Social Security Adjudication Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 43**

F21 S. 27(4)(5) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 9, 30, Sch. 2 para. 42, **Sch. 10**

28 Restrictions on removal where applicant has provided home for 5 years.

(1) While an application for an adoption order in respect of a child made by the person with whom the child has had his home for the 5 years preceding the application is pending, no person is entitled, against the will of the applicant, to remove the child from the applicant's **[**[F22]care and possession**]** except with the leave of the court or under authority conferred by any enactment or on the arrest of the child.

(2) Where a person ("the prospective adopter":) gives notice to the local authority within whose area he has his home that he intends to apply for an adoption order in respect of a child who for the preceding 5 years has had his home with the prospective adopter, no person is entitled, against the will of the prospective adopter, to remove the child from the prospective adopter's **[**[F22]care and possession**]**, except with the leave of a court or under authority conferred by any enactment or on the arrest of the child, before—

(a) the prospective adopter applies for the adoption order, or

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(b) the period of 3 months from the receipt of the notice by the local authority expires,

whichever occurs first.

(3) In any case where subsection (1) or (2) applies and—

(a) the child was in the care of a local authority before he began to have his home with the applicant or, as the case may be, the prospective adopter, and

(b) the child remains in the care of a local authority,

the authority in whose care the child is shall not remove the child from the care and possession of the applicant or of the prospective adopter except in accordance with section 30 or 31 or with leave of a court.

(4) Subsection (3) does not apply where the removal of the child is authorised, in terms of Part III of the [M10]Social Work (Scotland) Act 1968, by a justice of the peace or a children's hearing.

(5) A local authority which receives such notice as is mentioned in subsection (2) in respect of a child whom the authority know to be in the care of another local authority or of a voluntary organisation shall, not more than 7 days after the receipt of the notice, inform that other authority or the organisation in writing that they have received the notice.

(6) Subsection (2) does not apply to any further notice served by the prospective adopter on any local authority in respect of the same child during the period referred to in paragraph (b) of that subsection or within 28 days after its expiry.

(7) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

(8) . . . . . [F23]

(9) . . . . . [F23]

(10) The Secretary of State may by order amend subsection (1) or (2) to substitute a different period for the period of 5 years mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).

(11) In subsections (2) and (3) "a court" means a court having jurisdiction to make adoption orders.

Textual Amendments

F22 Words substituted by Health and Social Services and Social Security Adjudication Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 43**

F23 S. 28(8)(9) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 9, 30, Sch. 2 para. 42, **Sch. 10**

Marginal Citations

M10 1968 c. 49.

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29 Return of child taken away in breach of s. 27 or 28.

(1) An authorised court may on the application of a person from whose **[**[F24]care and possession**]** a child has been removed in breach of section 27 or 28 **[**[F25], or section 27 or 28 of the Adoption Act 1976**]**[[F26]or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987**]** order the person who has so removed the child to return the child to the applicant.

(2) An authorised court may on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's **[**[F24]care and possession**]** in breach of section 27 or 28 **[**[F25], or section 27 or 28 of the Adoption Act 1976**]**[[F26]or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987**]** by order direct that other person not to remove the child from the applicant's **[**[F24]care and possession**]** in breach of section 27 or 28 **[**[F25], or section 27 or 28 of the Adoption Act 1976**]**[[F26]or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987**]**.

Textual Amendments

F24 Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c.41, SIF 113:3), **s. 9 Sch. 2 para. 43**

F25 Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c.41, SIF 113:3), s. 9, **Sch. 2 para. 44**

F26 Words inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 39 (with **Sch. 14 para. 1(1)**)

30 Return of children placed for adoption by adoption agencies.

(1) Subject to subsection (2), at any time after a child has been delivered into the care and possession of any person in pursuance of arrangements made by an approved adoption society or local authority for the adoption of the child by that person, and before an adoption order has been made on the application of that person in respect of the child—

(a) that person may give notice in writing to the society or authority of his intention not to retain the care and possession of the child; or

(b) the society or authority may cause notice in writing to be given to that person of their intention not to allow the child to remain in his care and possession.

(2) No notice under paragraph (b) of subsection (1) shall be given in respect of a child in relation to whom an application has been made for an adoption order except with the leave of the court to which the application has been made.

(3) Where a notice is given to an adoption society or local authority by any person, or by such a society or authority to any person, under subsection (1), or where an application for an adoption order made by any person in respect of a child placed in his care and possession by such a society or authority is refused by the court or withdrawn, that person shall, within 7 days after the date on which notice was given or the application refused or withdrawn, as the case may be, cause the child to be returned to the society or authority, who shall receive the child.

(4) Where the period specified in an interim order made under section 25 (whether as originally made or as extended under subsection (2) of that section) expires without an adoption order having been made in respect of the child, subsection (3) shall apply

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as if the application for an adoption order upon which the interim order was made had been refused at the expiration of that period.

(5) It shall be sufficient compliance with the requirements of subsection (3) if the child is delivered to, and is received by, a suitable person nominated for the purpose by the adoption society or local authority.

(6) Where an application for an adoption order is refused the court may, if it thinks fit at any time before the expiry of the period of 7 days mentioned in subsection (3), order that period to be extended to a duration, not exceeding 6 weeks, specified in the order.

(7) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both; and the court by which the offender is convicted may order the child in respect of whom the offence is committed to be returned to his parent or guardian or to the adoption society or local authority which made the arrangements referred to in subsection (1).

31 Application of s. 30 where child not placed for adoption.

(1) Where a person gives notice in pursuance of section 22(1) to the local authority within whose area he has his home of his intention to apply for an adoption order in respect of a child who is for the time being in the care of a local authority, not being a child who was delivered into the care and possession of that person in pursuance of such arrangements as are mentioned in section 30(1), that section shall apply as if the child had been so delivered, except that where the application is refused by the court or withdrawn the child need not be returned to the local authority in whose care he is unless that authority so require.

(2) Where notice of intention is given as aforesaid in respect of any child who is for the time being in the care of a local authority then, until the application for an adoption order has been made and disposed of, any right of the local authority to require the child to be returned to them otherwise than in pursuance of section 30 shall be suspended.

(3) While the child remains in the care and possession of the person by whom the notice is given no contribution shall be payable (whether under a contribution order or otherwise) in respect of the child by any person liable under section 78 of the [M11]Social Work (Scotland) Act 1968 to make contributions in respect of him (but without prejudice to the recovery of any sum due at the time the notice is given), unless 12 weeks have elapsed since the giving of the notice without the application being made or the application has been refused by the court or withdrawn.

Marginal Citations
M11 1968 c. 49.

Protected children

32 Meaning of "protected child":.

(1) Where a person gives notice in pursuance of section 22(1) to the local authority within whose area he lives of his intention to apply for an adoption order in respect of a child,

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the child is for the purposes of this Part a protected child while he has his home with that person.

(2) A child shall be deemed to be a protected child for the purposes of this Part if he is a protected child within the meaning of section 32 of the [M12]Adoption Act 1976 **[**[F27]or Article 33 of the Adoption (Northern Ireland) Order 1987**]**.

(3) A child is not a protected child by reason of any such notice as is mentioned in subsection (1) while—

(a) he is in the care of any person in any school, home or institution as is mentioned in **[**[F28]section 2(2) of the Foster Children (Scotland) Act 1984**]**; or

(b) he is resident in a residential establishment provided for persons suffering from mental disorder under section 59 of the [M13]Social Work (Scotland) Act 1968; or

(c) he is liable to be detained or subject to guardianship under **[**[F29]section 17 or 39 of the Mental Health (Scotland) Act 1984**]**.

(4) A protected child ceases to be a protected child when—

(a) the application for an adoption order lapses or is withdrawn;

(b) the application for an adoption order is granted or otherwise determined;

(c) an order is made awarding custody of the child;

(d) an order is made appointing a guardian of the child; or

(e) the child attains the age of 18 years.

Textual Amendments

F27 Words added (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 40 (with **Sch. 14 para. 1(1)**)

F28 Words substituted by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), ss. 22, 23(2), **Sch. 2 para. 7**

F29 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 38**

Marginal Citations

M12 1976 c. 36.

M13 1968 c. 49.

33 Duty of local authorities to secure well-being of protected children.

(1) It shall be the duty of every local authority to secure that protected children within their area are visited from time to time by officers of the authority, who shall satisfy themselves as to the well-being of the children and give such advice as to their care and maintenance as may appear to be needed.

(2) Any officer of a local authority authorised to visit protected children may, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, inspect any premises in the area of the authority in which such children are to be or are being kept.

34 Removal of protected children from unsuitable surroundings.

(1) If the sheriff is satisfied, on the complaint of a local authority, that a protected child is being kept or is about to be received by any person who is unfit to have his care or in any premises or any environment detrimental or likely to be detrimental to him, the

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sheriff may make an order for his removal to a place of safety until he can be restored to a parent, relative or guardian of his, or until other arrangements can be made with respect to him; and on proof that there is imminent danger to the health or well-being of the child the power to make an order under this section may be exercised by a justice of the peace acting on the application of a person authorised to visit protected children.

(2) An order under this section may be executed by any person authorised to visit protected children or by any constable and may be executed on a Sunday.

(3) A local authority may receive into their care under section 15 of the [M14]Social Work (Scotland) Act 1968 any child removed under this section, whether or not the circumstances of the child are such that they fall within paragraphs (a) to (c) of subsection (1) of that section and notwithstanding that he may appear to the local authority to be over the age of 17 years.

(4) Where a child is removed under this section the local authority shall, if practicable, inform a parent or guardian of the child, or any person who acts as his guardian.

Marginal Citations
M14 1968 c. 49.

35 Notices and information to be given to local authorities.

(1) Where a person who has a protected child in his care and possession changes his permanent address he shall, not less than 2 weeks before the change, or, if the change is made in an emergency, not later than one week after the change, give notice specifying the new address to the local authority in whose area his permanent address is before the change, and if the new address is in the area of another local authority, the authority to whom the notice is given shall inform that other local authority and give them such of the following particulars as are known to them, that is to say—
   (a) the name, sex and date and place of birth of the child;
   (b) the name and address of every person who is a parent or guardian or acts as a guardian of the child or from whom the child has been or is to be received.

(2) If a protected child dies, the person in whose care and possession he was at his death shall within 48 hours give notice of the child's death to the local authority.

36 Offences relating to protected children.

(1) A person shall be guilty of an offence if—
   (a) being required under section 35 to give any notice or information, he fails to give the notice within the time specified in that provision or fails to give the information within a reasonable time, or knowingly makes or causes or procures another person to make any false or misleading statement in the notice or information;
   (b) he refuses to allow the visiting of a protected child by a duly authorised officer of a local authority or the inspection, under the power conferred by section 33(2), of any premises;
   (c) he refuses to comply with an order under section 34 for the removal of any child or obstructs any person in the execution of such an order.

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(2) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

Modifications etc. (not altering text)
C10 S. 36(1) modified by S.I. 1984/1050, art. 4, **Sch. para. 4**

37 Miscellaneous provisions relating to protected children.

(1) For the purposes of sections 14 and 323 of the [M15]Criminal Procedure (Scotland) Act 1975 (under which a warrant authorising the search for and removal of a child may be issued on suspicion of unnecessary suffering caused to, or certain offences committed against, the child), any refusal to allow the visiting of a protected child or the inspection of any premises by a person authorised to do so under section 33 shall be treated as giving reasonable cause for such a suspicion.

(2) A person who maintains a protected child shall be deemed for the purposes of the [M16]Life Assurance Act 1774 to have no interest in the life of the child.

Modifications etc. (not altering text)
C11 S. 37(1) modified by S.I. 1984/1050, art. 4, **Sch. para. 5**

Marginal Citations
M15 1975 c. 21.
M16 1774 c. 48.

PART IV

STATUS OF ADOPTED CHILDREN

38 Meaning of "adoption order": in Part IV.

(1) In this Part "adoption order" means—
- (a) an adoption order within the meaning of section 65(1);
- (b) an adoption order under the [M17]Children Act 1975, the [M18]Adoption Act 1958, the [M19]Adoption Act 1950 or any enactment repealed by the Adoption Act 1950;
- (c) an order effecting an adoption made in England, Wales, Northern Ireland, the Isle of Man or any of the Channel Islands;
- (d) an "overseas adoption": within the meaning of section 65(2); or
- (e) any other adoption recognised by the law of Scotland;

and cognate expressions shall be construed accordingly.

(2) The definition of adoption order includes, where the context admits, an adoption order which took effect before the commencement of the [M20]Children Act 1975.

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Marginal Citations

M17 1975 c. 72.
M18 1958 c. 5 (7 & 8 Eliz. 2).
M19 1950 c. 26.
M20 1975 c. 72.

39 Status conferred by adoption.

(1) A child who is the subject of an adoption order shall be treated in law—

(a) where the adopters are a married couple, as if he had been born as a legitimate child of the marriage (whether or not he was in fact born after the marriage was constituted);

(b) in any other case, as if he had been born as a legitimate child of the adopter (but not as a child of any actual marriage of the adopter);

and as if he were not the child of any person other than the adopters or adopter.

(2) Where **[**[F30]a**]** child has been adopted by one of his natural parents as sole adoptive parent and the adopter thereafter marries the other natural parent, subsection (1) shall not affect any enactment or rule of law whereby, by virtue of the marriage, the child is rendered the legitimate child of both natural parents.

(3) This section has effect—

(a) in the case of an adoption before 1st January 1976, from that date, and

(b) in the case of any other adoption, from the date of the adoption.

(4) Subject to the provisions of this Part, this section—

(a) applies for the construction of enactments or instruments passed or made before or after the commencement of this Act so far as the context admits; and

(b) does not affect things done or events occurring before the adoption or, where the adoption took place before 1st January 1976, before that date.

(5) This section has effect subject to the provisions of section 44.

Textual Amendments

F30 Words substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(1), 11(4), **Sch. 1 para. 18(2)**

40 . . . . . [F31]

Textual Amendments

F31 S. 40 repealed by British Nationality Act 1981 (c. 61, SIF 87), **Sch. 9**

41 Miscellaneous enactments.

(1) Section 39 does not apply in determining the forbidden degrees of consanguinity and affinity in respect of the law relating to marriage or in respect of the crime of incest,

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except that, on the making of an adoption order, the adopter and the child shall be deemed, for all time coming, to be within the said forbidden degrees in respect of the law relating to marriage **[**[F32]and incest**]**.

(2) . . . . . [F33]section 39 does not apply for the purposes of any provision of—

(a) **[**[F34]the British Nationality Act 1981**]**,

(b) the [M21]Immigration Act 1971,

(c) any instrument having effect under an enactment within paragraph (*a*) or (*b*), or

(d) any other law for the time being in force which determines **[**[F35]British citizenship, British Dependent Territories citizenship **[**[F36], the status of a British National (Overseas)**]** or British Overseas citizenship.**]**

(3) . . . . . [F37]

Textual Amendments

F32 Words added by Incest and Related Offences (Scotland) Act 1986 (c. 36, SIF 39:5), ss. 2(1), 3(4), **Sch. 1 para. 5**

F33 Words repealed by British Nationality Act 1981 (c. 61, SIF 87), s. 52(8), **Sch. 9**

F34 Words substituted by British Nationality Act 1981 (c. 61, SIF 87), s. 52(6), **Sch. 7**

F35 Words substituted by British Nationality Act 1981 (c. 61, SIF 87), s. 52(6), **Sch. 7**

F36 Words inserted by S.I. 1986/948, art. 8, **Sch.**

F37 S. 41(3)–(5) repealed by Social Security Act 1988 (c. 7, SIF 113:1), ss. 16, 19(3), **Sch. 5**

Marginal Citations

M21 1971 c. 77

42 Pensions.

Section 39(1) does not affect entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of his adoption.

43 Insurance.

Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy shall by virtue of the adoption be transferred to the adoptive parents who shall for the purposes of the enactments relating to such societies and companies be treated as the person who took out the policy.

44 Effect of s. 39 on succession and inter vivos deed.

Section 39 (status conferred by adoption) does not affect the existing law relating to adopted persons in respect of—

(a) the succession to a deceased person (whether testate or intestate), and

(b) the disposal of property by virtue of any inter vivos deed.

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PART V

REGISTRATION AND REVOCATION OF ADOPTION ORDERS AND CONVENTION ADOPTIONS

45 Adopted Children Register.

(1) The Registrar General for Scotland shall maintain at the General Register Office a register, to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.

(2) An extract of any entry in the Adopted Children Register maintained under this section, if purporting to be sealed or stamped with the seal of the General Register Office, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of the birth or the country of the birth of the adopted person, shall also be received as aforesaid as evidence of that date or country.

(3) The Registrar General for Scotland shall cause an index of the Adopted Children Register maintained under this section to be made and kept in the General Register Office; and the Registrar General for Scotland shall—

(a) cause a search to be made of that index on behalf of any person or permit that person to search the index himself, and

(b) issue to any person an extract of any entry in that register which that person may require,

in all respects upon and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under athe Registration of Births, Deaths and Marriages (Scotland) Act 1965 in respect of searches in other indexes kept in the General Register Office and in respect of the supply from that office of extracts of entries in the registers of births, deaths and marriages.

(4) The Registrar General for Scotland shall, in addition to the Adopted Children Register and the index thereto, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the register of births which has been marked "Adopted": pursuant to paragraph 1 of Schedule 1 or any enactment at the time in force and any corresponding entry in the Adopted Children Register maintained under this section.

(5) The registers and books kept under subsection (4) shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of the Court of Session or a sheriff, shall, the Registrar General for Scotland furnish any information contained in or any copy or extract from any such registers or books to any person other than an adopted person who has attained the age of 17 years and to whom that information, copy or extract relates or a local authority **[**[F38]or an approved adoption society which is providing counselling, under subsection (6), for that adopted person.

(6) Where the Registrar General for Scotland furnishes an adopted person with information under subsection (5), he shall advise that person that counselling services are available—

(a) from the local authority for the area where the adopted person lives; or

(b) if the adopted person's adoption was arranged by an adoption society which is approved under section 3 or under section 3 of the [M22]Adoption Act 1976, from that society,

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and it shall be the duty of such local authority and approved adoption society to provide counselling for adopted persons who have been furnished with information under subsection (5) and who apply to them for counselling in respect of that information and for adopted persons who apply for information under section 51(1) of the [M23]Adoption Act 1976.**][**[F38]Board or adoption society falling within subsection (6) which is providing counselling for that adopted person.

(6) Where the Registrar General for Scotland furnishes an adopted person with information under subsection (5), he shall advise that person that counselling services are available—

(a) if the person is in Scotland—

(i) from the local authority in whose area he is living;

(ii) where the adoption order relating to him was made in Scotland, from the local authority in whose area the court which made the order sat; or

(iii) from any other local authority in Scotland;

(b) if the person is in England and Wales—

(i) from the local authority in whose area he is living;

(ii) where the adoption order relating to him was made in England and Wales, from the local authority in whose area the court which made the order sat; or

(iii) from any other local authority in England and Wales;

(c) if the person is in Northern Ireland—

(i) from the Board in whose area he is living;

(ii) where the adoption order relating to him was made in Northern Ireland, from the Board in whose area the court which made the order sat; or

(iii) from any other Board;

(d) if the person is in the United Kingdom and his adoption was arranged by an adoption society—

(i) approved under section 3;

(ii) approved under section 3 of the Adoption Act 1976; or

(iii) registered under Article 4 of the Adoption (Northern Ireland) Order 1987,

from that society.

(6A) Where an adopted person who is in Scotland—

(a) is furnished with information under subsection (5); or

(b) applies for information under—

(i) section 51(1) of the Adoption Act 1976; or

(ii) Article 54 of the Adoption (Northern Ireland) Order 1987,

any body mentioned in subsection (6B) to which the adopted person applies for counselling shall have a duty to provide counselling for him.

(6B) The bodies referred to in subsection (6A) are—

(a) any local authority falling within subsection (6)(a); and

(b) any adoption society falling within subsection (6)(d) so far as it is acting as an adoption society in Scotland.**]**

(7) Where an adopted person has arranged to receive counselling **[**[F39]under**][**[F39]from a local authority, Board or adoption society falling within**]** subsection (6), the Registrar

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General for Scotland shall, on receipt of a request from the local authority **[**[F40]or adoption society which is providing that counselling**][**[F40], Board or adoption society**]**, and on payment of the appropriate fee, send to the authority **[**[F41], Board**]** or society an extract of the entry relating to the adopted person in the register of births.

(8) The provisions of the [M24]Registration of Births, Deaths and Marriages (Scotland) Act 1965 with regard to the correction of errors in entries shall apply to the Adopted Children Register maintained by the Registrar General for Scotland and to registration therein in like manner as they apply to any register of births and to registration therein.

(9) Schedule 1 to this Act, which, among other things, provides for the registration of adoptions and the amendment of adoption orders, shall have effect.

[[F42](10) In this section— " Board"means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) [M25]Order 1972; and "local authority", in relation to England and Wales, means the council of a county (other than a metropolitan county), a metropolitan district, a London borough or the Common Council of the City of London.**]**

Textual Amendments

F38 S. 45(6)–(6B) and preceding words substituted (*prosp.*) for s. 45(6) and words immediately preceding by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 41(a), Sch. 15 (with **Sch. 14 para. 1(1)**)

F39 Words commencing "from a local authority": substituted (*prosp.*) for word "under": by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 41(b)(i) (with **Sch. 14 para. 1(1)**)

F40 Words beginning ", Board or": substituted (*prosp.*) for words beginning "or adoption": by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 41(b)(ii) (with **Sch. 14 para. 1(1)**)

F41 Word inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 41(b)(iii) (with **Sch. 14 para. 1(1)**)

F42 S. 45(10) inserted (prosp.) by Childrens Act 1989 c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 41(c) (with Sch. 1 para,. 1(1))

Marginal Citations

M22 1976 c. 36.

M23 1976 c. 36.

M24 1965 c. 49.

M25 S.I. 1972/1265 (N.I. 14).

46 Revocation of adoptions on legitimation.

(1) Where the natural parents of **[**[F43]a**]** child, one of whom has adopted him in Scotland, have subsequently married each other, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke that order.

(2) Where a person adopted by his father or mother alone by virtue of a regulated adoption has subsequently become a legitimated person on the marriage of his father and mother, the Court of Session may, upon an application under this subsection by the parties concerned, by order revoke the adoption.

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Textual Amendments

F43 Word substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(1), 11(4), **Sch. 1 para. 18(3)**

47 Annulment etc. of overseas adoptions.

(1) The Court of Session may, upon an application under this subsection, by order annul a regulated adoption or an adoption effected by a Convention adoption order—

(a) on the ground that at the relevant time the adoption was prohibited by a notified provision, if under the internal law then in force in the country of which the adopter was then a national or the adopters were then nationals the adoption could have been impugned on that ground;

(b) on the ground that at the relevant time the adoption contravened provisions relating to consents of the internal law relating to adoption of the country of which the adopted person was then a national, if under that law the adoption could have been impugned on that ground;

(c) on any other ground on which the adoption can be impugned under the law for the time being in force in the country in which the adoption was effected.

(2) The Court of Session may, upon an application under this subsection—

(a) order that an overseas adoption or a determination shall cease to be valid in Great Britain on the ground that the adoption or 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) Any court in Great Britain may, in any proceedings in that court, decide that an overseas adoption or a determination shall, for the purposes of those proceedings, be treated as invalid in Great Britain on either of the grounds mentioned in subsection (2).

(4) An order or decision of the High Court on an application under subsection (2) of section 53 of the [M26]Adoption Act 1976 shall be recognised and have effect as if it were an order or decision of the Court of Session on an application under subsection (2) of this section.

(5) Except as provided by this section and section 46(2) the validity of an overseas adoption or a determination shall not be impugned in Scotland in proceedings in any court.

Marginal Citations

M26 1976 c. 36.

48 Provisions supplementary to ss. 46(2) and 47.

(1) Any application for an order under sction 46(2) or 47 or a decision under section 47(2)(b) shall be made in the prescribed manner and within such period, if any, as may be prescribed.

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(2) No application shall be made under section 46(2) or 47(1) in respect of an adoption unless immediately before the application is made the person adopted or the adopter habitually resides in Scotland or, as the case may be, both adopters habitually reside there.

(3) In deciding in pursuance of section 47 whether such an authority as is mentioned in section 53 was competent to entertain a particular case, a court shall 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 entertain the case.

(4) In section 47—

"determination" means such a determination as is mentioned in section 53;

"notified provision" means a provision specified in an order of the Secretary of State as one in respect of which a notification to or by the Government of the United Kingdom was in force at the relevant time in pursuance of the provisions of the Convention relating to prohibitions contained in the national law of the adopter; and

"relevant time" means the time when the adoption in question purported to take effect under the law of the country in which it purports to have been effected.

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

49 Adoption of children abroad.

(1) Where on an application made in relation to a child by a person who is not domiciled in England and Wales or Scotland **[**[F44]or Northern Ireland**]** an authorised court is satisfied that he intends to adopt the child under the law of or within the country in which the applicant is domiciled, the court may, subject to the following provisions of this section, make an order vesting in him the parental rights and duties relating to the child.

(2) The provisions of Part II relating to adoption orders, except sections 12(1), 14(2), 15(2), 17 to 21 and 25, shall apply in relation to orders under this section as they apply in relation to adoption orders subject to the modification that in section 13(1) for "19": and "13": there are substituted "32": and "26": respectively.

(3) Section 45 and paragraphs 1 and 2(1) and (3) of Schedule 1 shall apply in relation to an order under this section as they apply in relation to an adoption order except that any entry in the register of births or the Adopted Children Register which is required to be marked in consequence of the making of an order under this section shall, in lieu of being marked with the word "Adopted": or "Re-adopted": (with or without the addition of the **[**[F45]word "(England)":**][**[F45]words "(England)": or "(Northern Ireland)":**]**), be marked with the words "Proposed foreign adoption": or "Proposed foreign re-adoption":, as the case may require.

[[F46](4) References in sections 27, 28, 30, 31 and 32 to an adoption order include references to an order under this section or under section 55 of the [M27]Adoption Act 1976.**]**

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Textual Amendments

F44 Words inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 42(a) (with s. 108, **Sch. 14 para. 1(1)**)

F45 Words "words "(England)": or "(Northern Ireland)":": substituted (*prosp.*) for words "word "(England)":": by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 42(b) (with **Sch. 14 para. 1(1)**)

F46 S. 49(4) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**)

Modifications etc. (not altering text)

C12 S. 49 excluded by S.I. 1984/1050, art. 4, **Sch. 1 para. 3**

Marginal Citations

M27 1976 c. 36.

50 Restriction on removal of children for adoption outside Great Britain.

(1) Except under the authority of an order under section 49, or under section 55 of the [M28]Adoption Act 1976 **[**[F47]or Article 57 of the Adoption (Northern Ireland) Order 1987**]**, it shall not be lawful for any person to take or send a child who is a British subject or a citizen of the Republic of Ireland out of Great Britain to any place outside the United Kingdom, the Channel Islands and the Isle of Man with a view to the adoption of the child by any person not being a parent or guardian or relative of the child; and any person who takes or sends a child out of Great Britain to any place in contravention of this subsection, or makes or takes part in any arrangements for transferring the care and possession of a child to any person for that purpose, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both.

(2) In any proceedings under this section, a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer shall, upon proof that the officer or the deponent cannot be found in the United Kingdom, be sufficient evidence of the matters stated therein, and it shall not be necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.

(3) A person shall be deemed to take part in arrangements for transferring the care and possession of a child to a person for the purpose referred to in subsection (1) if—

(a) he facilitates the placing of the child in the care and possession of that person; or

(b) he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, or if he causes another person to do so.

Textual Amendments

F47 Words inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 43 (with s. 108, **Sch. 14 para. 1(1)**)

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Marginal Citations

M28 1976 c. 36.

VALID FROM 02/07/2001

[F48 50A Restriction on bringing children into the United Kingdom for adoption

(1) A person habitually resident in the British Islands who at any time brings into the United Kingdom for the purpose of adoption a child who is habitually resident outside those Islands shall be guilty of an offence unless such requirements as may be prescribed by regulations made by the Secretary of State are satisfied either—

(a) before that time; or

(b) within such period beginning with that time as may be so prescribed.

(2) Subsection (1) does not apply where the child is brought into the United Kingdom for the purpose of adoption by a parent, guardian or relative.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

(4) Proceedings for an offence under this section may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this subsection more than three years after the commission of the offence.]

Textual Amendments

F48 S. 50A inserted (2.7.2001) by 1999 c. 18, **s. 14**; S.S.I. 2001/235, **art. 2**

51 Prohibition on certain payments.

(1) Subject to the provisions of this section, it shall not be lawful to make or give to any person any payment or reward for or in consideration of—

(a) the adoption by that person of a child;

(b) the grant by that person of any agreement or consent required in connection with the adoption of a child;

(c) the transfer by that person of the care and possession of a child with a view to the adoption of the child; or

(d) the making by that person of any arrangements for the adoption of a child.

(2) Any person who makes or gives, or agrees or offers to make or give, any payment or reward prohibited by this section, or who receives or agrees to receive or attempts to obtain any such payment or reward, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both; and the court may order any child in respect of whom the offence was committed to be removed to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him.

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(3) This section does not apply to any payment made to an adoption agency by a parent or guardian of a child or by a person who adopts or proposes to adopt a child, being a payment in respect of expenses reasonably incurred by the agency in connection with the adoption of the child, or to any payment or reward authorised by the court to which an application for an adoption order in respect of a child is made.

(4) This section does not apply to—
- (a) any payment made by an adoption agency to a person who has applied or proposes to apply to a court for an adoption order or an order under section 49, being a payment of or towards any legal or medical expenses incurred or to be incurred by that person in connection with the application; or
- (b) any payment made by an adoption agency to another adoption agency in consideration of the placing of a child in the care and possession of any person with a view to the child's adoption; or
- (c) any payment made by an adoption agency to a voluntary organisation for the time being approved for the purposes of this paragraph by the Secretary of State as a fee for the services of that organisation in putting that adoption agency into contact with another adoption agency with a view to the making of arrangements between the adoption agencies for the adoption of a child.

(5) If an adoption agency submits to the Secretary of State a scheme for the payment by the agency of allowances to persons who have adopted or intend to adopt a child where arrangements for the adoption were made, or are to be made, by that agency, and the Secretary of State approves the scheme, this section shall not apply to any payment made in accordance with the scheme.

(6) The Secretary of State, in the case of a scheme approved by him under subsection (5), may at any time—
- (a) make, or approve the making by the agency of, alterations to the scheme;
- (b) revoke the scheme.

(7) The Secretary of State shall, within seven years of the date on which section 32 of the [M29]Children Act 1975 came into force and, thereafter, every five years, publish a report on the operation of the schemes since that date or since the publication of the last report.

(8) . . . . . [F49]

(9) The Secretary of State may by order made by statutory instrument at any time before the said anniversary repeal subsection (8) of this section.

(10) An order under subsection (9) of this section shall not be made unless a report has been published under subsection (7) of this section.

(11) Notwithstanding the expiry of subsection (5) of this section or the revocation of a scheme approved under this section, subsection (1) of this section shall not apply in relation to any payment made, whether before or after the expiry of subsection (5) or the revocation of the scheme, in accordance with a scheme which was approved under this section to a person to whom such payments were made—
- (a) where the scheme was not revoked, before the expiry of subsection (5), or
- (b) if the scheme was revoked, before the date of its revocation.

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Textual Amendments

F49 S. 51(8) repealed S.I. 1989/194, **art. 2**

Marginal Citations

M29 1975 c. 72.

VALID FROM 12/12/1996

[F50 51A Adoption allowances schemes.

(1) Subject to subsection (2), an adoption agency which is—

(a) a local authority shall, within such period after the coming into force of this section as the Secretary of State may by order direct;

(b) an approved adoption society may,

prepare a scheme (in this section and in section 51B referred to as an "adoption allowances scheme") for the payment by the agency of allowances to any person who has adopted, or intends to adopt, a child in any case where arrangements for the adoption were made, or as the case may be are to be made, by the agency.

(2) The Secretary of State may make regulations as respects adoption allowances schemes; and without prejudice to the generality of this subsection such regulations may in particular make provision as to—

(a) the procedure to be followed by an agency in determining whether a person should be paid an allowance;

(b) the circumstances in which an allowance may be paid;

(c) the factors to be taken into account in determining the amount of an allowance;

(d) the procedure for review, variation and termination of allowances;

(e) the information about allowances which is to be supplied by an agency to a person who intends to adopt a child; and

(f) the procedure to be followed by an agency in drawing up, in making alterations to, or in revoking and replacing, an adoption allowances scheme.

(3) Section 51(1) shall not apply to any payment made in accordance with an adoption allowances scheme (including any such payment made by virtue of section 51B).]

Textual Amendments

F50 S. 51A inserted (12.12.1996 for specified purposes and 1.4.1998 for all other purposes) by 1995 c. 36, s. 98(1), **Sch. 2 para. 25** (with s. 103(1)); S.I. 1996/3201, **art. 3(5)(7)(a)** (as amended by S.I. 1997/744, **art. 2**)

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VALID FROM 01/04/1997

[[F51]51B Transitional provisions as respects adoption allowances.

After the coming into force of section 51A—

(a) no scheme for the payment of allowances shall be submissible under subsection (5) of section 51; and

(b) a scheme which has been approved under that subsection of that section shall forthwith be revoked under subsection (6)(b) of that section, so however that where a person was before its revocation receiving payments made in accordance with that scheme he may continue to receive payments so made which, had there been no revocation, would have fallen to be made to him or he may agree to receive, instead of the continued payments, payments made in accordance with an adoption allowances scheme.**]**

Textual Amendments

F51 S. 51B inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 25** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **art. 2**)

52 Restriction on advertisements.

(1) It shall not be lawful for any advertisement to be published indicating—

(a) that the parent or guardian of a child desires to cause a child to be adopted; or

(b) that a person desires to adopt a child; or

(c) that any person (not being an adoption agency) is willing to make arrangements for the adoption of a child.

(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

Modifications etc. (not altering text)

C13 S. 52 modified by S.I. 1984/1050, art. 4, **Sch. para. 7**

53 Effect of determination and orders made in England and Wales and overseas in adoption proceedings.

(1) Where an authority of a Convention country or any British territory other than **[**[F52]Great Britain**][**[F52]the United Kingdom**]** having power under the law of that country or territory—

(a) to authorise or review the authorisation of a regulated adoption or a specified order; or

(b) to give or review a decision revoking or annulling a regulated adoption, a specified order or a Convention adoption order,

makes a determination in the exercise of that power, then, subject to sections 46(2) and 47 and any subsequent determination having effect under this subsection, the

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determination shall have effect in Scotland for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination, as the case may be.

[[F53X5](2) Subsections (2) and (3) of section 12 shall apply in relation to an order under section 18 of the [M30]Adoption Act 1976 (freeing children for adoption in England or Wales) as if the order were an adoption order; and, on the revocation of the order under section 20 of that Act, any duty extinguished by section 12(3)(b) is forthwith revived but the revival does not have effect as respects anything done or not done before the revival.**]**

[[F53X5](2) Subsections (2) to (4) of section 12 shall apply in relation to an order freeing a child for adoption (other than an order under section 18) as if it were an adoption order; and on the revocation in England and Wales or Northern Ireland of an order freeing a child for adoption subsection (3) of section 20 shall apply as if the order had been revoked under that section.**]**

(3) Sections 12(3) and (4) and 43 apply in relation to a child who is the subject of an order which is similar to an order under section 49 and is made (whether before or after this Act has effect) in Englnad or Wales, Northern Ireland, the Isle of Man or any of the Channel Islands, as they apply in relation to a child who is the subject of an adoption order.

Editorial Information

X5 S. 53(2) ending "under that section" substituted (*prosp.*) for S. 53(2) ending "before the revival" by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 44(b) (with s. 108, **Sch. 14 para. 1(1)**)

Textual Amendments

F52 Words "the United Kingdom" substituted (*prosp.*) for words "Great Britain" by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 44(a) (with **Sch. 14 para. 1(1)**)

F53 S. 53(2) ending "under that section" substituted (*prosp.*) for s. 53(2) ending "before the revival" by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 44(b) (with s. 108, **Sch. 14 para. 1(1)**)

Marginal Citations

M30 1976 c. 36.

54 Evidence of adoption in England, Wales and Northern Ireland.

Any document which is receivable as evidence of any matter—

(a) in England and Wales under section 50(2) of the [M31]Adoption Act 1976; or

(b) in Northern Ireland under **[**[F54]section 23(4) of the [M32]Adoption Act (Northern Ireland) 1967 or any corresponding provision contained in a Measure of the Northern Ireland Assembly for the time being in force**]**[[F54]Article 63(1) of the Adoption (Northern Ireland) Order 1987**]**,

shall also be so receivable in Scotland.

Textual Amendments

F54 Words beginning "Article 63(1)": substituted (*prosp.*) for words beginning "section 23(4)": by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 45 (with **Sch. 14 para. 1(1)**)

Marginal Citations

M31 1976 c. 36.

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M32 1967 c. 35 (N.I.)

55 Evidence of agreement and consent.

(1) Any agreement or consent which is required by this Act to be given to the making of an order or application for an order (other than an order to which section 17(6) applies) may be given in writing, and, if the document signifying the agreement or consent is witnessed in accordance with rules, it shall be sufficient evidence without further proof of the signature of the person by whom it was executed.

(2) A document signifying such agreement or consent which purports to be witnessed in accordance with rules, shall be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

Modifications etc. (not altering text)
C14 S. 55 excluded (transitionally) S.I. 1984/1050, art. 4, **Sch. para. 2**

56 Courts.

(1) In this Act, "authorised court":, as respects an application for an order relating to a child, shall be construed as follows.

(2) Subject to subsections (4) and (5), if the child is in Scotland when the application is made, the following are authorised courts—
  (a) the Court of Session;
  (b) the sheriff court of the sheriffdom within which the child is.

(3) If, in the case of an application for an adoption order or for an order freeing a child for adoption, the child is not in Great Britain when the application is made, the Court of Session is the authorised court.

(4) In the case of an application for a Convention adoption order, paragraph (b) of subsection (2) does not apply.

(5) Subsection (2) does not apply in the case of an application under section 29 but for the purposes of such an application the following are authorised courts—
  (a) if there is pending in respect of the child an application for an adoption order or an order freeing him for adoption, the court in which that application is pending;
  (b) in any other case—
    (i) the Court of Session;
    (ii) the sheriff court of the sheriffdom within which the applicant resides.

57 Proceedings to be in private.

All proceedings before the court under Part II, section 29 or section 49 shall be heard and determined in private unless the court otherwise directs.

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58 Curators ad litem and reporting officers.

(1) For the purpose of any application for an adoption order or an order freeing a child for adoption or an order under section 20 or 49, rules shall provide for the appointment, in such cases as are prescribed—

(a) of a person to act as curator ad litem of the child upon the hearing of the application, with the duty of safe-guarding the interests of the child in the prescribed manner;

(b) of a person to act as reporting officer for the purpose of witnessing agreements to adoption and performing such other duties as the rules may prescribe.

(2) A person who is employed—

(a) in the case of an application for an adoption order, by the adoption agency by whom the child was placed; or

(b) in the case of an application for an order freeing a child for adoption, by the adoption agency by whom the application was made; or

(c) in the case of an application under section 20, by the adoption agency with the parental rights and duties relating to the child,

shall not be appointed to act as curator ad litem or reporting officer for the purposes of the application but, subject to that, the same person may if the court thinks fit be both curator ad litem and reporting officer.

(3) Rules may provide for the reporting officer to be appointed before the application is made.

Modifications etc. (not altering text)

C15 S. 58 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. paras. 2, **3**

59 Rules of procedure.

(1) Subject to subsection (4), provision shall be made by act of sederunt with regard to any matter to be prescribed under this Act and generally with regard to all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect.

(2) In the case of—

(a) an application for an adoption order in relation to a child who is not free for adoption;

(b) an application for an order freeing a child for adoption,

rules shall require every person who can be found and whose agreement or consent to the making of the order is required to be given or dispensed with under this Act to be notified of a date and place where he may be heard on the application and of the fact that, unless he wishes or the court requires, he need not attend.

(3) In the case of an application under section 49, rules shall require every person who can be found, and whose agreement to the making of the order would be required if the application were for an adoption order (other than a Convention adoption order), to be notified as aforesaid.

(4) This section does not apply to sections 9, 10, 11 and 32 to 37.

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Modifications etc. (not altering text)
C16 S. 59(2) excluded (transitionally) by S.I. 1984/1050, art. 4, **Sch. para. 2**

60 Orders, rules and regulations.

(1) Any power to make orders or regulations conferred by this Act on the Secretary of State or the Registrar General for Scotland shall be exercisable by statutory instrument.

(2) A statutory instrument containing regulations made under any provision of this Act, except section 3 (1), shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) An order under section 28(10) or 51(9) shall not be made unless a draft of the order has been approved by resolution of each House of Parliament.

(4) An order made under any provision of this Act may be revoked or varied by a subsequent order under that provision.

(5) Any order, rule or regulation made under this Act may make different provision for different circumstances and may contain such incidental and transitional provisions as the authority making the order or regulation considers expedient.

(6) The Registrar General for Scotland shall not make regulations under paragraph 1(1) of Schedule 1 except with the approval of the Secretary of State.

(7) The [M33]Statutory Instruments Act 1946 shall apply to a statutory instrument containing regulations made for the purposes of this Act by the Registrar General for Scotland as if the regulations had been made by a Minister of the Crown.

Marginal Citations
M33 1946 c. 36.

61 Offences by bodies corporate.

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, member of the committee, secretary or other officer of the body, he as well as the body shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

62 Service of notices etc.

Any notice or information required to be given under this Act may be given by post.

63 Nationality.

(1) If the Secretary of State by order declares that a description of persons specified in the order has, in pursuance of the Convention, been notified to the Government of the United Kingdom as the description of persons who are deemed to possess the nationality of a particular Convention country, persons of that description shall, subject

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to the following provisions of this section, be treated for the purposes of this Act as nationals of that country.

(2) Subject to section 48(3) and subsection (3) of this section, where it appears to the court in any proceedings under this Act, or to any court by which a decision in pursuance of section 47(3) falls to be given, that a person is or was at a particular time a national of two or more countries, then—

(a) if it appears to the said court that he is or was then a United Kingdom national, he shall be treated for the purposes of those proceedings or that decision as if he were or had then been a United Kingdom national only;

(b) if, in a case not falling within paragraph (a), it appears to the said court that one only of those countries is or was then a Convention country, he shall be treated for those purposes as if he were or had then been a national of that country only;

(c) if, in a case not falling within paragraph (a), it appears to the said court that two or more of those countries are or were then Convention countries, he shall be treated for those purposes as if he were or had then been a national of such one only of those Convention countries as the said court considers is the country with which he is or was then most closely connected;

(d) in any other case, he shall be treated for those purposes as if he were or had then been a national of such one only of those countries as the said court considers is the country with which he is or was then most closely connected.

(3) A court in which proceedings are brought in pursuance of section 17, 46(2) or 47 shall be entitled to disregard the provisions of subsection (2) in so far as it appears to that court appropriate to do so for the purposes of those proceedings; but nothing in this subsection shall be construed as prejudicing the provisions of section 48(3).

(4) Where, after such inquiries as the court in question considers appropriate, it appears to the court in any proceedings under this Act, or to any court by which such a decision as aforesaid falls to be given, that a person has no nationality or no ascertainable nationality, he shall be treated for the purposes of those proceedings or that decision as a national of the country in which he resides or, where that country is one of two or more countries having the same law of nationality, as a national of those countries.

64 Internal law of a country.

(1) In this Act "internal law" in relation to any country means the law applicable in a case where no question arises as to the law in force in any other country.

(2) In any case where the internal law of a country falls to be ascertained for the purposes of this Act by any court and there are in force in that country two or more systems of internal law, the relevant system shall be ascertained in accordance with any rule in force throughout that country indicating which of the systems is relevant in the case in question or, if there is no such rule, shall be the system appearing to that court to be most closely connected with the case.

65 Interpretation.

(1) In this Act, unless the context otherwise requires—

"adoption agency" in sections 11, 13, 18 to 23 and 27 includes an adoption agency within the meaning of section 1 of the [M34]Adoption Act 1976 (adoption agencies in England and Wales) **[**[F55]and an adoption agency within the

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meaning of Article 3 of the Adoption (Northern Ireland) Order 1987 (adoption agencies in Northern Ireland)**]**;

[[F56]"adoption order" means an order under section 12(1) and, in sections 12(3) and (4), 18 to 20 **[**[F57], 27 and 28**]** and 30 to 32, includes an order under section 12 of the [M35]Adoption Act 1976 (adoption orders in England and Wales);**]**

[[F56]"adoption order"—

(a) means an order under section 12(1); and

(b) in sections 12(3) and (4), 18 to 20, 27, 28 and 30 to 32 and in the definition of "British adoption order": in this subsection includes an order under section 12 of the [M36]Adoption Act 1976 and Article 12 of the [M37]Adoption (Northern Ireland) Order 1987 (adoption orders in England and Wales and Northern Ireland respectively); and

(c) in sections 27, 28 and 30 to 32 includes an order under section 49, section 55 of the Adoption Act 1976 and Article 57 of the Adoption (Northern Ireland) Order 1987 (orders in relation to children being adopted abroad);**]**

"adoption society" means a body of persons whose functions consist of or include the making of arrangements for the adoption of children;

"approved adoption society" means an adoption society approved under Part I and, in sections 30 and 45, includes an adoption society approved under Part I of the [M38]Adoption Act 1976;

"authorised court" shall be construed in accordance with section 56;

"body of persons" means any body of persons, whether incorporated or unincorporated;

[[F58]"British adoption order" means an adoption order, an order under section 12 of the [M39]Adoption Act 1976 or any provision for the adoption of a child effected under the law of Northern Ireland or any British territory outside the United Kingdom;**]**

[[F58]"British adoption order" means—

(a) an adoption order as defined in this subsection; and

(b) an order under any provision for the adoption of a child effected under the law of any British territory outside the United Kingdom;**]**

"British territory" means, for the purposes of any provision of this Act, any of the following countries, that is to say, Great Britain, Northern Ireland, the Channel Islands, the Isle of Man and a colony, being a country designated for the purposes of that provision by order of the Secretary of State or, if no country is so designated, any of those countries;

"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 relating to the adoption of children concluded at The Hague on 15th November 1965 and signed on behalf of the United Kingdom on that date;

"Convention adoption order" means an adoption order made in accordance with section 17(1);

"Convention country" means any country outside British territory, being a country for the time being designated by an order of the Secretary of State as a country in which, in his opinion, the Convention is in force;

"England" includes Wales;

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"guardian" means—

(a) a person appointed by deed or will . . . [F59]or by a court of competent jurisdiction to be the guardian of the child, and

(b) in the case of **[**[F60]a child whose father is not married to the mother, includes the father where he has, in relation to the child, tutory, curatory, custody, access or any other parental right by virtue of an order by a court of competent jurisdiction.**]**

"internal law" has the meaning assigned by section 64;

"local authority" means a regional or islands council **[**[F61]and, in sections 13, 22, 28, 30, 31, 35(1) and 45, includes the council of a county (other than a metropolitan county), a metropolitan district, a London borough or the Common Council of the City of London;**]**

"notice" means a notice in writing;

"order freeing a child for adoption" means an order under section 18 **[**[F62]and, in **[**[F63]section 27(2), [M40] includes an order under section 18 of the Adoption Act 1976 (order freeing a child for adoption made in England and Wales**][**[F63]sections 27(2) and 53 includes an order under–

(a) section 18 of the Adoption Act 1976; and

(b) Article 17 or 18 of the Adoption (Northern Ireland) Order 1987;**]]**;

"overseas adoption" has the meaning assigned by subsection (2);

"place of safety" means any residential or other establishment provided by a local authority, a police station, or any hospital, surgery or other suitable place the occupier of which is willing temporarily to receive a child;

"prescribed" means prescribed by act of sederunt;

"Registrar General for Scotland" means the Registrar General of Births, Deaths and Marriages for Scotland;

"regulated adoption" means an overseas adoption of a description designated by an order under subsection (2) as that of an adoption regulated by the Convention;

"relative" in relation to a child means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by affinity and includes, where the child is illegitimate, the father of the child and any person who would be a relative within the meaning of this definition if the child were the legitimate child of his mother and father;

"rules" means rules made by act of sederunt;

"specified order" means any provision for the adoption of a child effected under enactments similar to section 12(1) and 17 in force in **[**[F64]Northern Ireland or**]** any British territory outside the United Kingdom;

"United Kingdom national" means, for the purposes of any provision of this Act, a citizen of the United Kingdom and Colonies satisfying such conditions, if any, as the Secretary of State may by order specify for the purposes of that provision;

"voluntary organisation" means a body, other than a public or local authority, the activities of which are not carried on for profit.

(2) In this Act "overseas adoption" means an adoption of such a description as the Secretary of State may by order specify, being a description of adoptions of children appearing to him to be effected under the law of any country outside Great Britain; and an order under this subsection may contain provision as to the manner in which evidence of an overseas adoption may be given.

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(3) For the purposes of this Act, a person shall be deemed to make arrangements for the adoption of a child if he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of the child by any other person, whether the adoption is effected, or is intended to be effected, in Great Britain or elsewhere, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, or if he causes another person to do so **[**[F65]but the making, under section 44 of the Social Work (Scotland) Act 1968, by a children's hearing of a supervision requirement which, in respect that it provides as to where he is to reside, facilitates his being placed for adoption by an adoption agency, shall not constitute the making of such arrangements.**]**.

(4) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(5) In this Act, except where otherwise indicated—

(a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and

(b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and

(c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

Textual Amendments

F55 Words added (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 46(a) (with **Sch. 14 para. 1(1)**)

F56 Definition of "adoption order": ending "adopted abroad": substituted (*prosp.*) for definition ending "England and Wales);": by Children Act 1989 (c. 41, SIF 20), **ss. 88**, 108 Sch. 10 para. 46(b) (with Sch. 14 para. 1(1))

F57 Words inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 45**(*a*)

F58 Definition of "British adoption order": beginning "British adoption order means— (*a*)": substituted (*prosp.*) the definition beginning " "British adoption order": means an adoption order,": by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 46(c) (with **Sch. 14 para. 1(1)**)

F59 Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(2), 11(4), **Sch. 2**

F60 Words substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(1), 11(4), **Sch. 1 para. 18(4)**

F61 Words repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**)

F62 Words added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 45**(*b*)

F63 Words "sections 27(2)": to "1987;": substituted (*prosp.*) for words "section 27(2)": to "Wales)": by Children Act 1989 (c. 41, SIF 20), s. 88, 108, Sch. 10 para. 46(d) (with **Sch. 14 para. 1(1)**)

F64 Words repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch 15 (with Sch. 14 paras. 1(1), **27(4)**)

F65 Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 27**, 60(6)

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Changes to legislation: *Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 18 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations

M34 1976 c. 36.
M35 1976 c. 36.
M36 1976 c.36 (**49:11**).
M37 S.I. 1987/2203 (N.I. 22).
M38 1976 c. 36.
M39 1976 c. 36.
M40 1976 c.36 (**49:11**).

66 Transitional provisions, amendments and repeals.

(1) The transitional provisions contained in Schedule 2 shall have effect.

(2) The enactments specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Act.

(3) The enactments specified in Schedule 4 are hereby repealed to the extent specified in column 3 of that Schedule.

Modifications etc. (not altering text)

C17 The text of s. 66(2)(3), Schs. 3, 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated in Sch. 3, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

67 Short title, commencement and extent.

(1) This Act may be cited as the Adoption (Scotland) Act 1978.

(2) This Act shall come into force on such date as the Secretary of State may by order appoint and different dates may be appointed for different provisions.

(3) Until the date appointed under subsection (2) for sections 3, 4, 5 and 8, in this Act and in the [M41]Adoption Act 1958 "adoption agency" means a local authority or a registered adoption society within the meaning of the said Act of 1958.

(4) This Act shall extend to Scotland only.

Modifications etc. (not altering text)

C18 Power of appointment conferred by s. 67(2) fully exercised: S.I. 1984/1050, **art. 3**

Marginal Citations

M41 1958 c. 5 (7 & 8 Eliz. 2).

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SCHEDULES

SCHEDULE 1

Section 45.

REGISTRATION OF ADOPTIONS

Registration of adoption orders

1 (1) Every adoption order shall contain a direction to the Registrar General for Scotland to make in the Adopted Children Register maintained by him an entry recording the adoption in such form as the Registrar General for Scotland may by regulations specify.

(2) The direction contained in a Convention adoption order in pursuance of this paragraph shall include an instruction that the entry made in that register in consequence of the order shall be marked with the words "Convention order":.

(3) For the purposes of compliance with the requirements of sub-paragraph (1)—

(a) where the precise date of the child's birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth;

(b) where the country of birth of the child is not proved to the satisfaction of the court, then, if it appears probable that the child was born within the United Kingdom, the Channel Islands or the Isle of Man, he shall be treated as having been born in Scotland, and in any other case the particulars of the country of birth may be omitted from the order and from the entry in the Adopted Children Register;

and the names to be specified in the order as the name and surname of the child shall be the name or names and surname stated in that behalf in the application for the adoption order, or, if no name or surname is so stated, the original name or names of the child and the surname of the applicant.

(4) There shall be produced with every application for an adoption order in respect of a child whose birth has been registered under the [M42]Registration of Births, Deaths and Marriages (Scotland) Act 1965 or under any enactment repealed by that Act an extract of the entry of the birth.

(5) Where on an application to a court for an adoption order in respect of a child (not being a child who has previously been the subject of an adoption order made by a court in Scotland under this Act or any enactment at the time in force) there is proved to the satisfaction of the court the identity of the child with a child to whom an entry in the register of births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar General for Scotland to cause the entry in that register to be marked with the word "Adopted":.

(6) Where an adoption order is made in respect of a child who has previously been the subject of an adoption order made by a court in Scotland under this Act or any

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enactment at the time in force, the order shall contain a direction to the Registrar General for Scotland to cause the previous entry in the Adopted Children Register to be marked with the word "Re-adopted":.

(7) Where an adoption order is made, the clerk of the court which made the order shall cause the order to be communicated to the Registrar General for Scotland and upon receipt of the communication the Registrar General for Scotland shall cause compliance to be made with the directions contained in the order.

Subordinate Legislation Made

P1 Sch. 1 para. 1(1) power exercised by S.I. 1991/1261

Marginal Citations

M42 1965 c. 49.

Registration of adoptions in England, Northern Ireland, the Isle of Man and the Channel Islands

2 (1) Where the Registrar General for Scotland is notified by the Registrar General that an adoption order has been made by a court in England in respect of a child to whom an entry in the register of births or the Adopted Children Register relates, the Registrar General for Scotland shall cause the entry to be marked "Adopted (England)": or, as the case may be, "Re-adopted (England)":.

(2) Where the Registrar General for Scotland is notified by the authority maintaining a register of adoptions in Northern Ireland, the Isle of Man or any of the Channel Islands that an order has been made in that country authorising the adoption of a child to whom an entry in the register of births or the Adopted Children Register relates, he shall cause the entry to be marked "Adopted": or "Re-adopted":, as the case may be, followed by the name in brackets of the country in which the order was made.

(3) Where, after an entry has been marked under the foregoing provisions of this paragraph, the Registrar General for Scotland is notified as aforesaid that the order has been quashed, that an appeal against the order has been allowed or that the order has been revoked, he shall cause the marking to be cancelled; and an extract of an entry in any register, being an entry the marking of which is cancelled under this sub-paragraph, shall be deemed to be accurate if and only if both the marking and the cancellation are omitted therefrom.

(4) The foregoing provisions of this paragraph shall apply in relation to orders corresponding to orders under section 49 as they apply in relation to orders authorising the adoption of a child; but any marking of an entry required by virtue of this sub-paragraph shall consist of the words "proposed foreign adoption": or, as the case may require, "proposed foreign re-adoption": followed by the name in brackets of the country in which the order was made.

Registration of overseas adoptions

3 If the Registrar General for Scotland is satisfied that an entry in the register of births relates to a person adopted under an overseas adoption and that he has sufficient particulars relating to that person to enable an entry, in the form specified for the

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purposes of this paragraph in regulations made under paragraph 1(1), to be made in the Adopted Children Register in respect of that person, he shall—

(a) make such an entry in the Adopted Children Register; and

(b) if there is a previous entry in respect of that person in that register, mark the entry (or if there is more than one such entry the last of them) with the word "Re-adopted": followed by the name in brackets of the country in which the adoption was effected; and

(c) unless the entry in the register of births is already marked with the word "Adopted": (whether or not followed by other words), mark the entry with that word followed by the name in brackets of the country aforesaid.

Amendment of orders and rectification of registers

4 (1) The court by which an adoption order has been made may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein, and may—

(a) if satisfied on the application of the adopter or the adopted person that within one year beginning with the date of the order any new name has been given to the adopted person (whether in baptism or otherwise), or taken by him, either in lieu of or in addition to a name specified in the particulars required to be entered in the Adopted Children Register in pursuance of the order, amend the order by substituting or adding that name in those particulars, as the case may require;

(b) if satisfied on the application of any person concerned that a direction for the marking of an entry in the register of births or the Adopted Children Register included in the order in pursuance of sub-paragraph (5) or (6) of paragraph 1 was wrongly so included, revoke that direction.

(2) Where an adoption order is amended or a direction revoked under sub-paragraph (1), the clerk of the court shall cause the amendment to be communicated in the prescribed manner to the Registrar General for Scotland who shall as the case may require—

(a) cause the entry in the Adopted Children Register to be amended accordingly; or

(b) cause the marking of the entry in the register of births or the Adopted Children Register to be cancelled.

(3) Where an adoption order is quashed or an appeal against an adoption order allowed by any court, the court shall give directions to the Registrar General for Scotland to cancel any entry in the Adopted Children Register, and any marking of an entry in that Register, or the register of births as the case may be, which was effected in pursuance of the order.

(4) If the Registrar General for Scotland is satisfied—

(a) that a Convention adoption order or an overseas adoption has ceased to have effect, whether on annulment or otherwise; or

(b) that any entry or mark was erroneously made in pursuance of paragraph 3 in any register mentioned in that paragraph, he may cause such alterations to be made in any such register as he considers are required in consequence of the cesser or to correct the error; and where an entry in such a register is amended in pursuance of this sub-paragraph, an extract of the entry shall

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be deemed to be accurate if and only if it shows the entry as amended but without indicating that it has been amended.

Marking of entries on re-registration of birth

5 Without prejudice to any other provision of this Act where, after an entry in the register of births has been marked in accordance with paragraph 2 or 3, the birth is re-registered under section 20(1) of the [M43]Registration of Births, Deaths and Marriages (Scotland) Act 1965 (re-registration of birth in certain cases), the entry made on re-registration shall be marked in the like manner.

Marginal Citations
M43 1965 c. 49.

Cancellations in registers on legitimation

6 Where an adoption order is revoked under section 46(1) the clerk of the court shall cause the revocation to be communicated in the prescribed manner to the Registrar General for Scotland who shall cause to be cancelled—

(a) the entry in the Adopted Children Register relating to the adopted person; and

(b) the marking with the word "Adopted": (or, as the case may be, with that word and the word "(England)") of any entry relating to him in the register of births;

and an extract of an entry in any register, being an entry the marking of which is cancelled under this paragraph shall be deemed to be accurate if and only if both the marking and the cancellation are omitted therefrom.

7 In this Schedule, "Registrar General" means the Registrar General for England and Wales.

SCHEDULE 2

Section 66.

Transitional Provisions and Savings

General

1 In so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under that provision.

2 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when that period began to run.

3 Nothing in this Act shall affect the enactments repealed by this Act in their operation in relation to offences committed before the commencement of this Act.

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4 Any reference in any enactment or document, whether express or implied, to an enactment repealed by this Act shall, unless the context otherwise requires, be construed as a reference to the corresponding enactment in this Act.

Existing adoption orders

5 (1) Without prejudice to paragraph 1, an adoption order made under an enactment at any time before this Act comes into force shall not cease to have effect by virtue only of a repeal effected by this Act.

(2) Paragraph 4(1) and (2) of Schedule 1 shall apply in relation to an adoption order made before this Act came into force as if the order had been made under section 12, but as if, in sub-paragraph (1)(b) of the said paragraph 4, there were substituted for the reference to paragraph 1(5) and (6) a reference—

(a) in the case of an order under the [M44]Adoption Act 1950, to section 20(4) and (5) of that Act,

(b) in the case of an order under the [M45]Adoption Act 1958, to section 23(4) and (5) of that Act.

(3) The power of the court under the said paragraph 4(1) to amend an order includes power, in relation to an order made before 1st April 1959, to make on the application of the adopter or adopted person any such amendment of the particulars contained in the order as appears to be required to bring the order into the form in which it would have been made if paragraph 1 of Schedule 1 had applied to the order.

(4) Section 46(1) and paragraph 6 of Schedule 1 shall apply in relation to an adoption order made under an enactment at any time before this Act came into force as they apply in relation to an adoption order made under this Act.

Marginal Citations

M44 1950 c. 26.

M45 1958 c. 5 (7 & 8 Eliz. 2).

Payments relating to adoptions

6 Section 51(8), (9) and (10) shall not have effect if, immediately before section 51 comes into force, there is in force in Scotland an order under section 50(8) of the [M46]Adoption Act 1958.

Marginal Citations

M46 1958 c. 5 (7 & 8 Eliz. 2).

Registers of adoptions

7 Any register or index to a register kept under the [M47]Adoption Act 1958, or any register or index deemed to be part of such a register, shall be deemed to be part of the register or index kept under section 45.

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Marginal Citations
M47 1958 c. 5 (7 & 8 Eliz. 2).

Commencement of Act

8 An order under section 67(2) may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions or any provision of this Act then in force or any provision of the [M48]Adoption Act 1958 or the [M49]Children Act 1975 as appear to him to be necessary or expedient in consequence of the partial operation of this Act.

Marginal Citations
M48 1958 c. 5 (7 & 8 Eliz. 2).
M49 1975 c. 72.

SCHEDULE 3

Section 66.

CONSEQUENTIAL AMENDMENTS

Modifications etc. (not altering text)
C19 The text of s. 66(2)(3), Schs. 3, 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated in Sch. 3, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Children Act 1958 (c. 65)

1—3. . . . . [F66]

Textual Amendments
F66 Sch. 3 paras. 1–3 repealed by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), ss. 22, 23, **Sch. 3**

4 In section 23 of the Succession (Scotland) Act 1964, in subsection (3), for the words from “section”: to “prevent”: there shall be substituted the words “ section or in the Children Act 1975 or in the Adoption (Scotland) Act 1978 shall prevent ” ; and in subsection (5), for the words from “means an order”: to the end of the subsection there shall be substituted the words “ has the same meaning as in section 38 of the Adoption (Scotland) Act 1978 (whether the order took effect before or after the commencement of this Act) ; and “adopted”: means adopted in pursuance of an adoption order ”.

5 In section 37(1) of the said Act of 1964, for the words from “nothing in this Act”: to “shall”: where that word first occurs there shall be substituted the words “ nothing

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in this Act or (as respects paragraph (a) of this subsection) in the Children Act 1975 or the Adoption (Scotland) Act 1978 shall ".

Legitimation (Scotland Act 1968 (c. 22)

6 In section 6(2) of the Legitimation (Scotland) Act 1968, for the words from the beginning to "other shall": there shall be substituted the words " The revocation (under this section or otherwise) of any adoption order within the meaning of section 38 of the Adoption (Scotland) Act 1978 in consequence of the marriage of the parents of the adopted person to each other shall ".

7 In section 6(3) of the said Act of 1968, for the words "section 26 of the Adoption Act 1958": there shall be substituted the words " section 46 of the Adoption (Scotland) Act 1978 ".

Social Work (Scotland) Act 1968 (c. 49)

8 In section 2(2) of the Social Work (Scotland) Act 1968, after paragraph (h) there shall be inserted the following paragraph—

"(j) the Adoption (Scotland) Act 1978,".

9 In section 5(2)(c) of the said Act of 1968, for the words "and (h)": there shall be substituted the words " (h) and (j) ".

10 In section 6(1)(b) of the said Act of 1968—

(a) in head (ii), for the words "Part IV of the Adoption Act 1958": there shall be substituted the words " section 32 of the Adoption (Scotland) Act 1978 " ;

(b) in head (iii), for the words "Children Act 1975": there shall be substituted the words " Adoption (Scotland) Act 1978 ".

11 In section 10(1) of the said Act of 1968, for the words "and (h)": there shall be substituted the words " (h) and (j) ".

12 In section 10(3A) of the said Act of 1968, for the words "Children Act 1975": there shall be substituted the words " Adoption (Scotland) Act 1978 ".

13 In section 16(3) and (11)(b) of the said Act of 1968, for the words from "section 14": to "Act 1976": there shall be substituted the words "section 18 or 55 of the Adoption Act 1976 or under section 18 or 49 of the Adoption (Scotland) Act 1978":.

14 In section 16(11)(a) of the said Act of 1968, for the words "Schedule 2 to the Children Act 1975": there shall be substituted the words "section 38 of the Adoption (Scotland) Act 1978":.

15 In section 18(4A) of the said Act of 1968, for the words "section 8 of the Children Act 1975":, "section 14 of the Children Act 1975": and "section 25 of the Children Act 1975": there shall be substituted respectively the words "section 12 of the Adoption (Scotland) Act 1978":, "section 18 of the said Act of 1978": and "section 49 of the said Act of 1978":.

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Children Act 1975 (c. 72)

16 In section 47(5) of the Children Act 1975, for the words "1958 Act": in both places where those words occur there shall be substituted the words " Adoption (Scotland) Act 1978 ".

17 In section 103(1)(a) of the said Act of 1975, for paragraph (i) there shall be substituted the following paragraph—

"(i) section 58 of the Adoption (Scotland) Act 1978 ;".

18 In section 105 of the said Act of 1975, after the word "time" there shall be inserted the words " (including such sections as have been repealed by and re-enacted in the Adoption (Scotland) Act 1978 ".

19 In section 107(1) of the said Act of 1975, in the definition of "adoption society": for the words "1958 Act": there shall be substituted the words " Adoption (Scotland) Act 1978 ".

SCHEDULE 4

Section 66.

REPEALS

Modifications etc. (not altering text)

C20 The text of s. 66(2)(3), Schs. 3, 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated in Sch. 3, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short Title	Extent of Repeal
1958 c. 5 (7 & 8 Eliz. 2).	Adoption Act 1958.	The whole Act.
1960 c. 59.	Adoption Act 1960.	The whole Act.
1964 c. 41.	Succession (Scotland) Act 1964.	Section 24(4).
1964 c. 57.	Adoption Act 1964.	The whole Act.
1965 c. 49.	Registration of Births, Deaths and Marriages (Scotland) Act 1965.	In Schedule 1, paragraphs 7 to 10.
1968 c. 49.	Social Work (Scotland) Act 1968.	In Schedule 8, paragraphs 37 to 41.
1968 c. 53.	Adoption Act 1968.	The whole Act.
1969 c. 54.	Children and Young Persons Act 1969.	In Schedule 5, paragraphs 33 and 35.
1973 c. 65.	Local Government (Scotland) Act 1973.	In Schedule 27, paragraph 142.
1975 c. 72.	Children Act 1975.	Sections 1 to 32. Section 100(4), (5) and (9). In section 102(1), the words " Part I except section 24(6) or " and paragraph (*a*). In section 107(1), the definitions of " approved adoption society ", " British adoption order ", " British territory ", " the Convention ", " Convention adoption order ", " Convention country " and " United Kingdom national ", and, in the definition of " guardian ", paragraph (*b*). Section 107(2A). Section 108(5) and (6). In Schedule 2, paragraphs 1 to 4, 5(1), (2) and (4), 6(1) and (3), and 7. In Schedule 3, paragraphs 17, 21 to 40, 44, 45 and 61 to 65.
1976 c. 36.	Adoption Act 1976.	Sections 22 and 23. Section 51(3). Section 73(2). In section 74(3), the words from " except " to " Schedule 3 ". In Schedule 3, paragraphs 25 to 44.
1977 c. 45.	Criminal Law Act 1977.	In Schedule 12, the entry relating to the Adoption Act 1958.
1978 c. 22.	Domestic Proceedings and Magistrates' Courts Act 1978.	Section 74(1) and (3). In section 90(2), the words " 74(1) and (3) " and " 17 and 18 ". In Schedule 2, paragraphs 17 and 18.

Status:
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Changes to legislation:
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