



Adoption (Scotland) Act 1978

1978 CHAPTER 28

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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 (5.7.1994) by [Human Fertilisation and Embryology Act 1990](#) (c. 37, SIF 83:1), [s. 30\(9\)\(10\)](#) (with ss. 39(3), 43(2)); S.I. 1994/1776, [art. 2\(1\)](#)
- C2** Act modified (1.11.1994) by S.I. 1994/2804, [art. 2](#), [Sch. 1](#)
- C3** Act: power to modify conferred (1.10.2009) by [Human Fertilisation and Embryology Act 2008](#) (c. 22), [ss. 55, 68\(2\)](#); S.I. 2009/2232, [art. 2\(q\)](#)

Commencement Information

- I1** Act not in force at Royal Assent; wholly in force at 1.2.1985

^{F1}PART I **S**

THE ADOPTION SERVICE

Textual Amendments

- F1** Act repealed (except Pt. IV) (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007](#) (asp 4), [s. 121\(2\)](#), [sch. 3](#) (with savings by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Provisions\) \(No. 1\) Order 2009](#) (S.I. 2009/2233), [art. 2](#)); S.S.I. 2009/267, [arts. 1\(2\), 2](#) (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, [art. 2](#))

Changes to legislation: Adoption (Scotland) Act 1978 is up to date with all changes known to be in force on or before 23 May 2023. 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) View outstanding changes

The Adoption Service

1 Establishment of Adoption Service. S

.....

2 Local authorities’ social work. S

.....

Adoption societies

3 Approval of adoption societies. S

.....

4 Withdrawal of approval. S

.....

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

.....

Welfare of children

6 Duty to promote welfare of child. S

.....

6A Duty to consider alternatives to adoption. S

.....

7 Religious upbringing of adopted child. S

.....

Supplemental

8 S

9 Regulation of adoption agencies. S

.....

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10 **S**

11 **Restriction on arranging adoptions and placing of children.** **S**

.....

^{F1}PART II S

ADOPTION ORDERS

The making of adoption orders

12 **Adoption orders.** **S**

.....

13 **Child to live with adopters before order made.** **S**

.....

14 **Adoption by married couple.** **S**

.....

15 **Adoption by one person.** **S**

.....

16 **Parental agreement.** **S**

.....

17 **Convention adoption orders.** **S**

.....

Freeing for adoption

18 **Freeing child for adoption.** **S**

.....

19 **Progress reports to former parent.** **S**

.....

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20 Revocation of s. 18 order. S

.....

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

.....

Supplemental

22 Notification to local authority of adoption application. S

.....

22A Children subject to supervision requirements. S

.....

23 Reports where child placed by agency. S

.....

24 Restrictions on making adoption orders. S

.....

25 Interim orders. S

.....

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

.....

26 S

^{F1}PART III S

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. S

.....

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

.....

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

.....

29A Contravention of sections 30 to 36 of Adoption and Children Act 2002 S

.....

30 Return of children placed for adoption by adoption agencies. S

.....

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

.....

Protected children

32 S

33 S

34 S

35 S

36 S

37 S

PART IV S

STATUS OF ADOPTED CHILDREN

Modifications etc. (not altering text)

C4 Part IV (meaning of "adopted ") applied (5.4.1993) by [Child Support Act 1991 \(SIF 20, c. 48\)](#), [s. 26\(3\)](#) (with [s. 9\(2\)](#)); [S.I. 1992/2644](#), [art.2](#)

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C5 Pt. IV applied (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), ss. 39(3), 121(2); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

38 Meaning of “adoption order”: in Part IV. **S**

(1) In this Part “adoption order” means—

- (a) an adoption order within the meaning of section 65(1);
 - (b) an adoption order under the ^{M1}Children Act 1975, the ^{M2}Adoption Act 1958, the ^{M3}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;
 - [^{F2}(cc) a Convention adoption;]
 - (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 ^{M4}Children Act 1975.

Textual Amendments

F2 S. 38(1)(cc) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 5(1), 18(3) (with s. 17); S.S.I. 2003/121, art. 2(c)

Marginal Citations

M1 1975 c. 72.
M2 1958 c. 5 (7 & 8 Eliz. 2).
M3 1950 c. 26.
M4 1975 c. 72.

39 Status conferred by adoption. **S**

[^{F3}(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—
 - (i) he had been born as a ^{F4}... child of the marriage (whether or not he was in fact born after the marriage was constituted); and
 - (ii) [^{F5}subject to subsection (2A)] he were not the child of any person other than the adopters;
- (b) where the adoption order is made by virtue of section 15(1)(aa) as if—
 - (i) he had been born as a ^{F4}... child of the marriage between the adopter and the natural parent to whom the adopter is married (whether or not he was in fact born after the marriage was constituted); and
 - (ii) [^{F5}subject to subsection (2A)] he were not the child of any person other than the adopter and that natural parent; and
- (c) in any other case, as if—
 - (i) he had been born as a ^{F4}... child of the adopter; and
 - (ii) [^{F5}subject to subsection (2A)] he were not the child of any person other than the adopter.]

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(2) Where [^{F6}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 ^{F7}... child of both natural parents.

[^{F8}(2A) Where, in the case of a child adopted under a Convention adoption, the Court of Session is satisfied, on an application under this subsection—

- (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption;
- (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption, or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention); and
- (c) that it would be more favourable to the child for a direction to be given under this subsection,

the Court may direct that sub-paragraph (ii) of, as the case may be, paragraph (a), (b) or (c) of subsection (1) shall not apply, or shall not apply to such extent as may be specified in the direction: and in this subsection “full adoption” means an adoption by virtue of which the child falls to be treated in law as if he were not the child of any person other than the adopters or adopter.]

(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

- F3** S. 39(1) substituted (1.4.1997) by 1995 c. 36, s. 97(3) (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F4** Word in s. 39(1) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), sch. 3; S.S.I. 2006/212, art. 2
- F5** Words in s. 39(1) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 5(2), 18(3) (with s. 17); S.S.I. 2003/121, art. 2(c)
- F6** Word in s. 39(2) 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)
- F7** Word in s. 39(2) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), sch. 3; S.S.I. 2006/212, art. 2
- F8** S. 39(2A) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 5(3), 18(3) (with s. 17); S.S.I. 2003/121, art. 2(c)

Modifications etc. (not altering text)

- C6** S. 39 modified (21.12.2018) by The Human Fertilisation and Embryology (Parental Orders) Regulations 2018 (S.I. 2018/1412), reg. 1(2), Sch. 4 para. 7

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40^{F9} **S**

Textual Amendments

F9 S. 40 repealed by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), **Sch. 9**

41 **Miscellaneous enactments.** **S**

- (1) Section 39 does not apply in determining the forbidden degrees of consanguinity and affinity in respect of the law relating to marriage [^{F10}, to the eligibility of persons to register as civil partners of each other] or in respect of the crime of incest, 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 [^{F11}, to such eligibility and to incest].
- (2) ^{F12} . . . section 39 does not apply for the purposes of any provision of—
- [^{F13}the British Nationality Act 1981],
 - the ^{M5}Immigration Act 1971,
 - any instrument having effect under an enactment within paragraph (a) or (b),
or
 - any other law for the time being in force which determines [^{F14}British citizenship, British Dependent Territories citizenship [^{F15}, the status of a British National (Overseas)] or British Overseas citizenship.]
- (3) ^{F16}

Textual Amendments

F10 Words in s. 41(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 86(10)(a)**, 263(3); [S.S.I. 2005/604](#), art. 2(b)

F11 Words in s. 41(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 86(10)(b)**, 263(3); [S.S.I. 2005/604](#), art. 2(b)

F12 Words repealed by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(8), **Sch. 9**

F13 Words substituted by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(6), **Sch. 7**

F14 Words substituted by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(6), **Sch. 7**

F15 Words inserted by [S.I. 1986/948](#), art. 8, **Sch.**

F16 S. 41(3)–(5) repealed by [Social Security Act 1988 \(c. 7, SIF 113:1\)](#), ss. 16, 19(3), **Sch. 5**

Modifications etc. (not altering text)

C7 S. 41(1) modified (21.12.2018) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2018 \(S.I. 2018/1412\)](#), reg. 1(2), **Sch. 4 para. 8**

Marginal Citations

M5 1971 c. 77

42 **Pensions.** **S**

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.

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43 Insurance. S

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. S

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.

Modifications etc. (not altering text)

C8 S. 44 modified (21.12.2018) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2018 \(S.I. 2018/1412\)](#), reg. 1(2), **Sch. 4 para. 9**

^{F1}PART V S

REGISTRATION AND REVOCATION OF ADOPTION ORDERS AND CONVENTION ADOPTIONS

45 Adopted Children Register. S

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46 Revocation of adoptions on legitimisation. S

.....

47 Annulment etc. of overseas adoptions. S

.....

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

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^{F1}PART VI S

MISCELLANEOUS AND SUPPLEMENTAL

49 Adoption of children abroad. S

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- 50 Restriction on removal of children for adoption outside Great Britain. S**
.....
- 50A Restriction on bringing children into the United Kingdom for adoption S**
.....
- 51 Prohibition on certain payments. S**
.....
- 51A Adoption allowances schemes. S**
.....
- 51B Transitional provisions as respects adoption allowances. S**
.....
- 52 Restriction on advertisements. S**
.....
- 53 Effect of determination and orders made in England and Wales and overseas in adoption proceedings. S**
.....
- 53A Effect of certain orders made in England and Wales S**
.....
- 53B Effect of placing for adoption etc. under Adoption and Children Act 2002 S**
.....
- 53C Further consequences of placement and placement orders S**
.....
- 54 Evidence of adoption in England, Wales and Northern Ireland. S**
.....
- 55 Evidence of agreement and consent. S**
.....

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- 56 **Courts.** **S**
.....
- 57 **Proceedings to be in private.** **S**
.....
- 58 **Curators ad litem and reporting officers.** **S**
.....
- 59 **Rules of procedure.** **S**
.....
- 60 **Orders, rules and regulations.** **S**
.....
- 61 **Offences by bodies corporate.** **S**
.....
- 62 **Service of notices etc.** **S**
.....
- 63 **Nationality.** **S**
.....
- 64 **Internal law of a country.** **S**
.....
- 65 **Interpretation.** **S**
.....
- 66 **Transitional provisions, amendments and repeals.** **S**
.....
- 67 **Short title, commencement and extent.** **S**
.....

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SCHEDULES

^{F1}SCHEDULE 1 **S** Section 45.

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^{F1}SCHEDULE 2 **S** Section 66.

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^{F1}SCHEDULE 3 **S** Section 66.

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^{F1} SCHEDULE 4 **S** Section 66.

REPEALS

Chapter	Short Title	Extent of Repeal
1958 c. 5 (7 & 8 Eliz. 2).	Adoption Act 1958.	The whole Act.
1960 c. 59, 1964 c. 41.	Adoption Act 1960. Succession (Scotland) Act 1964.	The whole Act. Section 24(4).
1964 c. 57, 1965 c. 49.	Adoption Act 1964. Registration of Births, Deaths and Marriages (Scotland) Act 1965.	The whole Act. 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, 1969 c. 54.	Adoption Act 1968. Children and Young Persons Act 1969.	The whole Act. 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 1 except section 24(6) or " and paragraph (e). 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 (6). 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. Sections 22 and 23. Section 31(3). Section 73(2). In section 74(3), the words from "except " to "Schedule 3 ". In Schedule 3, paragraphs 25 to 44.
1976 c. 36.	Adoption Act 1976.	In Schedule 12, the entry relating to the Adoption Act 1958. 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.
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.

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Changes and effects yet to be applied to :

- s. 17 restricted by [1999 c. 18 s. 16\(1\)](#)
- s. 50(1) words repealed by [2002 c. 38 s. 133\(1\)\(a\)Sch. 4](#)
- s. 50A substituted by [2002 c. 38 s. 133\(2\)](#)
- s. 52(1)(c) power to extend conferred by [2002 c. 38 Sch. 4 para. 16\(1\)\(b\)](#)
- s. 65(1) words substituted by [2002 c. 38 s. 133\(3\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 50(4)(5) inserted by [2002 c. 38 s. 133\(1\)\(b\)](#)
- s. 56A restricted by [1999 c. 18 s. 16\(1\)](#)
- s. 65(2)-(2D) substituted for s. 65(2) by [2002 c. 38 s. 134](#)