



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### 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.
- (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.

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

- (1) Subject to section 53(1) of the 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 a married couple where each has attained the age of 21 years but an adoption order shall not otherwise be made on the application of more than one person.
- (2) An adoption order shall not be made on the application of a married couple unless—
  - (a) at least one of them is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
  - (b) the application is for a Convention adoption order and section 17 is complied with.

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

- (1) Subject to section 53(1) of the 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, 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.

## **16 Parental agreement**

- (1) An adoption order shall not be made unless—
- (a) the child is free for adoption by virtue of an order made in England and Wales under section 18 of the Adoption Act 1976 and not revoked, or made in Scotland under section 18 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.

## 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—

- (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) and (3) 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 who agrees to the adoption of the child, 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 an illegitimate child whose father is not its guardian, the court shall satisfy itself in relation to any person claiming to be the father that either—
- (a) he has no intention of applying for custody of the child under section 2 of the Illegitimate Children (Scotland) Act 1930, or

(b) if he did apply for custody 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.

## **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
- (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 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.

## **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 under section 18(5) or 21 of the 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.

### *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.
- (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 receives 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.

### **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.

### **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, made any payment or given any reward to a person in contravention of section 51.

### **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.

### **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 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.