



# Adoption and Children Act 2002

## 2002 CHAPTER 38

### PART 1

#### ADOPTION

### CHAPTER 6

#### ADOPTIONS WITH A FOREIGN ELEMENT

##### *Bringing children into and out of the United Kingdom*

#### **83      Restriction on bringing children in**

(1) This section applies where a person who is habitually resident in the British Islands (the “British resident”)—

- (a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption by the British resident, or
- (b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of six months ending with that time.

The references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to a child adopted, by the British resident and another person.

(2) But this section does not apply if the child is intended to be adopted under a Convention adoption order.

(3) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outside the British Islands, whether or not the adoption is—

- (a) an adoption within the meaning of Chapter 4, or

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- (b) a full adoption (within the meaning of section 88(3)).
- (4) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—
  - (a) to apply to an adoption agency (including a Scottish or Northern Irish adoption agency) in the prescribed manner for an assessment of his suitability to adopt the child, and
  - (b) to give the agency any information it may require for the purpose of the assessment.
- (5) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.
- (6) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may—
  - (a) provide for any provision of Chapter 3 to apply with modifications or not to apply,
  - (b) if notice of intention to adopt has been given, impose functions in respect of the child on the local authority to which the notice was given.
- (7) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, he is guilty of an offence if—
  - (a) he has not complied with any requirement imposed by virtue of subsection (4), or
  - (b) any condition required to be met by virtue of subsection (5) is not met, before that time, or before any later time which may be prescribed.
- (8) A person guilty of an offence under this section is liable—
  - (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.
- (9) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Secretary of State, after consultation with the Assembly.

#### Commencement Information

**II** S. 83(1)-(7)(9) in force at 7.12.2004 for specified purposes by [S.I. 2004/3203](#), [art. 2\(1\)\(m\)\(vii\)](#)

## 84 Giving parental responsibility prior to adoption abroad

- (1) The High Court may, on an application by persons who the court is satisfied intend to adopt a child under the law of a country or territory outside the British Islands, make an order giving parental responsibility for the child to them.
- (2) An order under this section may not give parental responsibility to persons who the court is satisfied meet those requirements as to domicile, or habitual residence, in England and Wales which have to be met if an adoption order is to be made in favour of those persons.
- (3) An order under this section may not be made unless any requirements prescribed by regulations are satisfied.

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- (4) An application for an order under this section may not be made unless at all times during the preceding ten weeks the child's home was with the applicant or, in the case of an application by two people, both of them.
- (5) Section 46(2) to (4) has effect in relation to an order under this section as it has effect in relation to adoption orders.
- (6) Regulations may provide for any provision of this Act which refers to adoption orders to apply, with or without modifications, to orders under this section.
- (7) In this section, "regulations" means regulations made by the Secretary of State, after consultation with the Assembly.

#### Commencement Information

**I2** [S. 84](#) in force at 7.12.2004 for specified purposes by [S.I. 2004/3203](#), [art. 2\(1\)\(m\)\(vii\)](#)

VALID FROM 30/12/2005

### 85 Restriction on taking children out

- (1) A child who—
  - (a) is a Commonwealth citizen, or
  - (b) is habitually resident in the United Kingdom,must not be removed from the United Kingdom to a place outside the British Islands for the purpose of adoption unless the condition in subsection (2) is met.
- (2) The condition is that—
  - (a) the prospective adopters have parental responsibility for the child by virtue of an order under section 84, or
  - (b) the child is removed under the authority of an order under section 49 of the Adoption (Scotland) Act 1978 (c. 28) or Article 57 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).
- (3) Removing a child from the United Kingdom includes arranging to do so; and the circumstances in which a person arranges to remove a child from the United Kingdom include those where he—
  - (a) enters into an arrangement for the purpose of facilitating such a removal of the child,
  - (b) initiates or takes part in any negotiations of which the purpose is the conclusion of an arrangement within paragraph (a), or
  - (c) causes another person to take any step mentioned in paragraph (a) or (b).

An arrangement includes an agreement (whether or not enforceable).

- (4) A person who removes a child from the United Kingdom in contravention of subsection (1) is guilty of an offence.
- (5) A person is not guilty of an offence under subsection (4) of causing a person to take any step mentioned in paragraph (a) or (b) of subsection (3) unless it is proved that he knew or had reason to suspect that the step taken would contravene subsection (1).

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But this subsection only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.
- (7) In any proceedings under this section—
  - (a) a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible, upon proof that the officer or the deponent cannot be found in the United Kingdom, as evidence of the matters stated in it, and
  - (b) it is not necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.

## 86 Power to modify sections 83 and 85

- (1) Regulations may provide for section 83 not to apply if—
  - (a) the adopters or (as the case may be) prospective adopters are natural parents, natural relatives or guardians of the child in question (or one of them is), or
  - (b) the British resident in question is a partner of a parent of the child,
 and any prescribed conditions are met.
- (2) Regulations may provide for section 85(1) to apply with modifications, or not to apply, if—
  - (a) the prospective adopters are parents, relatives or guardians of the child in question (or one of them is), or
  - (b) the prospective adopter is a partner of a parent of the child,
 and any prescribed conditions are met.
- (3) On the occasion of the first exercise of the power to make regulations under this section—
  - (a) the statutory instrument containing the regulations is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament, and
  - (b) accordingly section 140(2) does not apply to the instrument.
- (4) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Secretary of State after consultation with the Assembly.

### Commencement Information

**I3** [S. 86](#) in force at 7.12.2004 for specified purposes by [S.I. 2004/3203](#), [art. 2\(1\)\(m\)\(vii\)](#)

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## Overseas adoptions

### 87 Overseas adoptions

- (1) In this Act, “overseas adoption”—
- (a) means an adoption of a description specified in an order made by the Secretary of State, being a description of adoptions effected under the law of any country or territory outside the British Islands, but
  - (b) does not include a Convention adoption.
- (2) Regulations may prescribe the requirements that ought to be met by an adoption of any description effected after the commencement of the regulations for it to be an overseas adoption for the purposes of this Act.
- (3) At any time when such regulations have effect, the Secretary of State must exercise his powers under this section so as to secure that subsequently effected adoptions of any description are not overseas adoptions for the purposes of this Act if he considers that they are not likely within a reasonable time to meet the prescribed requirements.
- (4) In this section references to this Act include the Adoption Act 1976 (c. 36).
- (5) An order under this section may contain provision as to the manner in which evidence of any overseas adoption may be given.
- (6) In this section—
- “adoption” means an adoption of a child or of a person who was a child at the time the adoption was applied for,
  - “regulations” means regulations made by the Secretary of State after consultation with the Assembly.

#### Commencement Information

- I4** S. 87(1)(a)(2)(5)(6) in force at 7.12.2004 for specified purposes by S.I. 2004/3203, art. 2(1)(m)(vii)
- I5** S. 87(1)(b)(4) in force at 1.6.2003 by S.I. 2003/366, art. 2(5)(a)

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## Miscellaneous

### 88 Modification of section 67 for Hague Convention adoptions

- (1) If the High Court is satisfied, on an application under this section, that each of the following conditions is met in the case of a Convention adoption, it may direct that section 67(3) does not apply, or does not apply to any extent specified in the direction.
- (2) The conditions are—
- (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),

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- (c) that it would be more favourable to the adopted child for a direction to be given under subsection (1).

- (3) A full adoption is an adoption by virtue of which the child is to be treated in law as not being the child of any person other than the adopters or adopter.
- (4) In relation to a direction under this section and an application for it, sections 59 and 60 of the Family Law Act 1986 (c. 55) (declarations under Part 3 of that Act as to marital status) apply as they apply in relation to a direction under that Part and an application for such a direction.

## **89 Annulment etc. of overseas or Hague Convention adoptions**

- (1) The High Court may, on an application under this subsection, by order annul a Convention adoption or Convention adoption order on the ground that the adoption is contrary to public policy.
- (2) The High Court may, on an application under this subsection—
  - (a) by order provide for an overseas adoption or a determination under section 91 to cease to be valid 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, or
  - (b) decide the extent, if any, to which a determination under section 91 has been affected by a subsequent determination under that section.
- (3) The High Court may, in any proceedings in that court, decide that an overseas adoption or a determination under section 91 is to be treated, for the purposes of those proceedings, as invalid on either of the grounds mentioned in subsection (2)(a).
- (4) Subject to the preceding provisions, the validity of a Convention adoption, Convention adoption order or overseas adoption or a determination under section 91 cannot be called in question in proceedings in any court in England and Wales.

## **90 Section 89: supplementary**

- (1) Any application for an order under section 89 or a decision under subsection (2)(b) or (3) of that section must be made in the prescribed manner and within any prescribed period.  
 “Prescribed” means prescribed by rules.
- (2) No application may be made under section 89(1) in respect of an adoption unless immediately before the application is made—
  - (a) the person adopted, or
  - (b) the adopters or adopter,
 habitually reside in England and Wales.
- (3) In deciding in pursuance of section 89 whether such an authority as is mentioned in section 91 was competent to entertain a particular case, a court is 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.

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## **91 Overseas determinations and orders**

- (1) Subsection (2) applies where any authority of a Convention country (other than the United Kingdom) or of the Channel Islands, the Isle of Man or any British overseas territory has power under the law of that country or territory—
  - (a) to authorise, or review the authorisation of, an adoption order made in that country or territory, or
  - (b) to give or review a decision revoking or annulling such an order or a Convention adoption.
- (2) If the authority makes a determination in the exercise of that power, the determination is to have effect for the purpose of effecting, confirming or terminating the adoption in question or, as the case may be, confirming its termination.
- (3) Subsection (2) is subject to section 89 and to any subsequent determination having effect under that subsection.

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