



# 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 [<sup>F1</sup>twelve] 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.

#### **Textual Amendments**

- F1** Word in s. 83(1)(b) substituted (1.10.2007) by [Children and Adoption Act 2006 \(c. 20\)](#), **ss. 14(1), 17(2)** (with [s. 14\(2\)](#)); [S.I. 2007/2287](#), **art. 1(2)(c)**

#### **Modifications etc. (not altering text)**

- C1** S. 83(1) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), **regs. 1(1), 2, Sch. 1**
- C2** S. 83(5) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), **regs. 1(1), 2, Sch. 1**
- C3** S. 83(7)-(9) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), **regs. 1(1), 2, Sch. 1**

#### **Commencement Information**

- I1** S. 83(1)-(7)(9) in force at 7.12.2004 for specified purposes by [S.I. 2004/3203](#), **art. 2(1)(m)(vii)**
- I2** S. 83(1)-(7)(9) in force at 30.12.2005 in so far as not already in force by [S.I. 2005/2213](#), **art. 2(f)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

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- I3** S. 83(8) in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(f)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 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.
- (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

- I4** S. 84 in force at 7.12.2004 for specified purposes by [S.I. 2004/3203](#), **art. 2(1)(m)(vii)**
- I5** S. 84 in force at 30.12.2005 in so far as not already in force by [S.I. 2005/2213](#), **art. 2(f)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 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 [<sup>F2</sup>section 59 of the [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#)] or Article 57 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).

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- (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).

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.

#### **Textual Amendments**

**F2** Words in s. 85(2)(b) substituted (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), **Sch. 1 para. 6(3)**

#### **Modifications etc. (not altering text)**

**C4** S. 85 excluded (6.4.2016) by [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#), **ss. 124(6), 199(2)** (with s. 124(9)); S.I. 2016/412, art. 2 (with art. 4, Sch. 1, Sch. 2)

#### **Commencement Information**

**I6** S. 85 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(f)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## **86 Power to modify sections 83 and 85**

- (1) Regulations may provide for section 83 not to apply if—

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- (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.

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**Commencement Information**

- 17** S. 86 in force at 7.12.2004 for specified purposes by [S.I. 2004/3203](#), [art. 2\(1\)\(m\)\(vii\)](#)
- 18** S. 86 in force at 30.12.2005 in so far as not already in force by [S.I. 2005/2213](#), [art. 2\(f\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

**Changes to legislation:**

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**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. 4A inserted by [2014 c. 6 s. 5](#)
- s. 141(7) inserted by [2010 c. 26 Sch. 3 para. 13](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 3 Pt. 2 repealed (4.9.2013) without ever being in force by [2013 c. 22, s. 17\(4\)](#) ; [S.I. 2013/2200 art. 2\(a\)](#))