Adoption and Children Act 2002

2002 CHAPTER 38

PART 3

MISCELLANEOUS AND FINAL PROVISIONS

CHAPTER 1

MISCELLANEOUS

VALID FROM 30/12/2005

Advertisements in the United Kingdom

123 Restriction on advertisements etc.

(1) A person must not—

(a) publish or distribute an advertisement or information to which this section applies, or

(b) cause such an advertisement or information to be published or distributed.

(2) This section applies to an advertisement indicating that—

(a) the parent or guardian of a child wants the child to be adopted,

(b) a person wants to adopt a child,

(c) a person other than an adoption agency is willing to take any step mentioned in paragraphs (a) to (e), (g) and (h) and (so far as relating to those paragraphs) (i) of section 92(2),

(d) a person other than an adoption agency is willing to receive a child handed over to him with a view to the child's adoption by him or another, or

(e) a person is willing to remove a child from the United Kingdom for the purposes of adoption.

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(3) This section applies to—

(a) information about how to do anything which, if done, would constitute an offence under section 85 or 93, section 11 or 50 of the Adoption (Scotland) Act 1978 (c. 28) or Article 11 or 58 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)) (whether or not the information includes a warning that doing the thing in question may constitute an offence),

(b) information about a particular child as a child available for adoption.

(4) For the purposes of this section and section 124—

(a) publishing or distributing an advertisement or information means publishing it or distributing it to the public and includes doing so by electronic means (for example, by means of the internet),

(b) the public includes selected members of the public as well as the public generally or any section of the public.

(5) Subsection (1) does not apply to publication or distribution by or on behalf of an adoption agency.

(6) The Secretary of State may by order make any amendments of this section which he considers necessary or expedient in consequence of any developments in technology relating to publishing or distributing advertisements or other information by electronic or electro-magnetic means.

(7) References to an adoption agency in this section include a prescribed person outside the United Kingdom exercising functions corresponding to those of an adoption agency, if the functions are being exercised in prescribed circumstances.

"Prescribed" means prescribed by regulations made by the Secretary of State.

(8) Before exercising the power conferred by subsection (6) or (7), the Secretary of State must consult the Scottish Ministers, the Department of Health, Social Services and Public Safety and the Assembly.

(9) In this section—

(a) "adoption agency" includes a Scottish or Northern Irish adoption agency,

(b) references to adoption are to the adoption of persons, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.

124 Offence of breaching restriction under section 123

(1) A person who contravenes section 123(1) is guilty of an offence.

(2) A person is not guilty of an offence under this section unless it is proved that he knew or had reason to suspect that section 123 applied to the advertisement or information.

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.

(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.

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VALID FROM 13/05/2014

Adoption and Children Act Register

VALID FROM 25/07/2014

125 Adoption and Children Act Register

(1) Her Majesty may by Order in Council make provision for the Secretary of State to establish and maintain a register, to be called the Adoption and Children Act Register, containing—
  (a) prescribed information about children who are suitable for adoption and prospective adopters who are suitable to adopt a child,
  (b) prescribed information about persons included in the register in pursuance of paragraph (a) in respect of things occurring after their inclusion.

(2) For the purpose of giving assistance in finding persons with whom children may be placed for purposes other than adoption, an Order under this section may—
  (a) provide for the register to contain information about such persons and the children who may be placed with them, and
  (b) apply any of the other provisions of this group of sections (that is, this section and sections 126 to 131), with or without modifications.

(3) The register is not to be open to public inspection or search.

(4) An Order under this section may make provision about the retention of information in the register.

(5) Information is to be kept in the register in any form the Secretary of State considers appropriate.

VALID FROM 25/07/2014

126 Use of an organisation to establish the register

(1) The Secretary of State may make an arrangement with an organisation under which any function of his under an Order under section 125 of establishing and maintaining the register, and disclosing information entered in, or compiled from information entered in, the register to any person is performed wholly or partly by the organisation on his behalf.

(2) The arrangement may include provision for payments to be made to the organisation by the Secretary of State.

(3) If the Secretary of State makes an arrangement under this section with an organisation, the organisation is to perform the functions exercisable by virtue of this section in accordance with any directions given by the Secretary of State and the directions may be of general application (or general application in any part of Great Britain) or be special directions.

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(4) An exercise of the Secretary of State's powers under subsection (1) or (3) requires the agreement of the Scottish Ministers (if the register applies to Scotland) and of the Assembly (if the register applies to Wales).

(5) References in this group of sections to the registration organisation are to any organisation for the time being performing functions in respect of the register by virtue of arrangements under this section.

VALID FROM 25/07/2014

127 Use of an organisation as agency for payments

(1) An Order under section 125 may authorise an organisation with which an arrangement is made under section 126 to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.

(2) The organisation is to perform the functions exercisable by virtue of this section in accordance with any directions given by the Secretary of State; and the directions may be of general application (or general application in any part of Great Britain) or be special directions.

(3) An exercise of the Secretary of State's power to give directions under subsection (2) requires the agreement of the Scottish Ministers (if any payment agency provision applies to Scotland) and of the Assembly (if any payment agency provision applies to Wales).

VALID FROM 25/07/2014

128 Supply of information for the register

(1) An Order under section 125 may require adoption agencies to give prescribed information to the Secretary of State or the registration organisation for entry in the register.

(2) Information is to be given to the Secretary of State or the registration organisation when required by the Order and in the prescribed form and manner.

(3) An Order under section 125 may require an agency giving information which is entered on the register to pay a prescribed fee to the Secretary of State or the registration organisation.

(4) But an adoption agency is not to disclose any information to the Secretary of State or the registration organisation—
   (a) about prospective adopters who are suitable to adopt a child, or persons who were included in the register as such prospective adopters, without their consent,
   (b) about children suitable for adoption, or persons who were included in the register as such children, without the consent of the prescribed person.

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(5) Consent under subsection (4) is to be given in the prescribed form.

VALID FROM 25/07/2014

129 Disclosure of information

(1) Information entered in the register, or compiled from information entered in the register, may only be disclosed under subsection (2) or (3).

(2) Prescribed information entered in the register may be disclosed by the Secretary of State or the registration organisation—
  (a) where an adoption agency is acting on behalf of a child who is suitable for adoption, to the agency to assist in finding prospective adopters with whom it would be appropriate for the child to be placed,
  (b) where an adoption agency is acting on behalf of prospective adopters who are suitable to adopt a child, to the agency to assist in finding a child appropriate for adoption by them.

(3) Prescribed information entered in the register, or compiled from information entered in the register, may be disclosed by the Secretary of State or the registration organisation to any prescribed person for use for statistical or research purposes, or for other prescribed purposes.

(4) An Order under section 125 may prescribe the steps to be taken by adoption agencies in respect of information received by them by virtue of subsection (2).

(5) Subsection (1) does not apply —
  (a) to a disclosure of information with the authority of the Secretary of State, or
  (b) to a disclosure by the registration organisation of prescribed information to the Scottish Ministers (if the register applies to Scotland) or the Assembly (if the register applies to Wales).

(6) Information disclosed to any person under subsection (2) or (3) may be given on any prescribed terms or conditions.

(7) An Order under section 125 may, in prescribed circumstances, require a prescribed fee to be paid to the Secretary of State or the registration organisation—
  (a) by a prescribed adoption agency in respect of information disclosed under subsection (2), or
  (b) by a person to whom information is disclosed under subsection (3).

(8) If any information entered in the register is disclosed to a person in contravention of subsection (1), the person disclosing it is guilty of an offence.

(9) A person guilty of an offence under subsection (8) 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.

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PROSPECTIVE

[F1]130 Territorial application

. . . . . .

Textual Amendments

F1 S. 130 repealed (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 7**; S.I. 2014/889, art. 5(f)

PROSPECTIVE

131 Supplementary

[[F2](1) In this group of sections—

[[F3](za) adoption agency" means—

(i) a local authority in England,

(ii) a registered adoption society whose principal office is in England,**]**

(a) "organisation" includes a public body and a private or voluntary organisation,

(b) "prescribed" means prescribed by **[**[F4]regulations**]**,

(c) "the register" means the Adoption and Children Act Register,

[[F5](ca) Welsh adoption agency" means—

(i) a local authority in Wales,

(ii) a registered adoption society whose principal office is in Wales.**]**

[F6](d) . . . . . .

[F7](e) . . . . . .

(2) For the purposes of this group of sections **[**[F8](except sections 125(1A) and 129(2A))**]** —

(a) a child is suitable for adoption if an adoption agency is satisfied that the child ought to be placed for adoption,

(b) prospective adopters are suitable to adopt a child if an adoption agency is satisfied that they are suitable to have a child placed with them for adoption.

[[F9](2A) For the purposes of sections 125(1A) and 129(2A)—

(a) a child is suitable for adoption if a Welsh, Scottish or Northern Irish adoption agency is satisfied that the child ought to be placed for adoption,

(b) prospective adopters are suitable to adopt a child if a Welsh, Scottish or Northern Irish adoption agency is satisfied that they are suitable to have a child placed with them for adoption.**]**

(3) Nothing authorised or required to be done by virtue of this group of sections constitutes an offence under section 93, 94 or 95.

[F10](4) . . . . . .

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F10(5) . . . . . .

F10(6) . . . . . .

F10(7) . . . . . .]

Textual Amendments

F2 Ss. 125-131 cease to have effect (S.) (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 11(1)**; S.I. 2014/889, art. 5(f)

F3 S. 131(1)(za) inserted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(a)**; S.I. 2014/889, art. 5(f)

F4 Word in s. 131(1)(b) substituted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(b)**; S.I. 2014/889, art. 5(f)

F5 S. 131(1)(ca) inserted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(c)**; S.I. 2014/889, art. 5(f)

F6 S. 131(1)(d) omitted (13.5.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(d)**; S.I. 2014/889, art. 5(f)

F7 S. 131(1)(e) omitted (13.5.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(2)(d)**; S.I. 2014/889, art. 5(f)

F8 Words in s. 131(2) inserted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(3)**; S.I. 2014/889, art. 5(f)

F9 S. 131(2A) inserted (13.5.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(4)**; S.I. 2014/889, art. 5(f)

F10 S. 131(4)-(7) omitted (13.5.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 1 para. 8(5)**; S.I. 2014/889, art. 5(f)

Other miscellaneous provisions

VALID FROM 30/12/2005

132 Amendment of Adoption (Scotland) Act 1978: contravention of sections 30 to 36 of this Act

After section 29 of the Adoption (Scotland) Act 1978 (c. 28) there is inserted—

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

(1) A person who contravenes any of the enactments specified in subsection (2) is guilty of an offence and 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.

(2) Those enactments are—

(a) section 30(1), (2) and (3) (removal of child placed or who may be placed for adoption),

(b) sections 32(2)(b), 33(2) and 35(2) (return of child by prospective adopters),

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(c) section 34(1) (removal of child in contravention of placement order),

(d) section 36(1) (removal of child in non-agency case), and

(e) section 36(5) (return of child to parent or guardian),

of the Adoption and Children Act 2002."

PROSPECTIVE

[F11]133 Scottish restriction on bringing children into or out of United Kingdom

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Textual Amendments

F11 Ss. 132-134 repealed: (S.) (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **sch. 3**; 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); and (E.W.N.I.) (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 2 Pt. 3**

PROSPECTIVE

[F11]134 Amendment of Adoption (Scotland) Act 1978: overseas adoptions

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Textual Amendments

F11 Ss. 132-134 repealed: (S.) (28.9.2009) by Adoption and Children (Scotland) Act 2007 (asp 4), s. 121(2), **sch. 3**; 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); and (E.W.N.I.) (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 2 Pt. 3**

135 Adoption and fostering: criminal records

(1) Part 5 of the Police Act 1997 (c. 50) (certificates of criminal records) is amended as follows.

(2) In section 113 (criminal record certificates), in subsection (3A), for "his suitability" there is substituted " the suitability of the applicant, or of a person living in the same household as the applicant, to be a foster parent or ".

(3) In section 115 (enhanced criminal record certificates), in subsection (6A), for "his suitability" there is substituted " the suitability of the applicant, or of a person living in the same household as the applicant, to be a foster parent or ".

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Commencement Information

I1 S. 135 in force at 1.6.2003 by S.I. 2003/366, **art. 2(5)(b)**

136 Payment of grants in connection with welfare services

(1) Section 93 of the Local Government Act 2000 (c. 22) (payment of grants for welfare services) is amended as follows.

(2) In subsection (1) (payment of grants by the Secretary of State), for the words from "in providing" to the end there is substituted—

"(a) in providing, or contributing to the provision of, such welfare services as may be determined by the Secretary of State, or

(b) in connection with any such welfare services."

(3) In subsection (2) (payment of grants by the Assembly), for the words from "in providing" to the end there is substituted—

"(a) in providing, or contributing to the provision of, such welfare services as may be determined by the Assembly, or

(b) in connection with any such welfare services."

(4) After subsection (6) there is inserted—

"(6A) Before making any determination under subsection (3) or (5) the Secretary of State must obtain the consent of the Treasury."

VALID FROM 30/12/2005

137 Extension of the Hague Convention to British overseas territories

(1) Her Majesty may by Order in Council provide for giving effect to the Convention in any British overseas territory.

(2) An Order in Council under subsection (1) in respect of any British overseas territory may, in particular, make any provision corresponding to provision which in relation to any part of Great Britain is made by the Adoption (Intercountry Aspects) Act 1999 (c. 18) or may be made by regulations under section 1 of that Act.

(3) The British Nationality Act 1981 (c. 61) is amended as follows.

(4) In section 1 (acquisition of British citizenship by birth or adoption)—

(a) in subsection (5), at the end of paragraph (b) there is inserted " effected under the law of a country or territory outside the United Kingdom ",

(b) at the end of subsection (5A)(b) there is inserted " or in a designated territory ",

(c) in subsection (8), the words following "section 50" are omitted.

(5) In section 15 (acquisition of British overseas territories citizenship)—

(a) after subsection (5) there is inserted—

"(5A) Where—

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(a) a minor who is not a British overseas territories citizen is adopted under a Convention adoption,

(b) on the date on which the adoption is effected—

(i) the adopter or, in the case of a joint adoption, one of the adopters is a British overseas territories citizen, and

(ii) the adopter or, in the case of a joint adoption, both of the adopters are habitually resident in a designated territory, and

(c) the Convention adoption is effected under the law of a country or territory outside the designated territory,

the minor shall be a British overseas territories citizen as from that date.",

(b) in subsection (6), after "order" there is inserted " or a Convention adoption ".

(6) In section 50 (interpretation), in subsection (1)—

(a) after the definition of "company" there is inserted—

""Convention adoption" means an adoption effected under the law of a country or territory in which the Convention is in force, and certified in pursuance of Article 23(1) of the Convention",

(b) after the definition of "Crown service under the government of the United Kingdom" there is inserted—

""designated territory" means a qualifying territory, or the Sovereign Base Areas of Akrotiri and Dhekelia, which is designated by Her Majesty by Order in Council under subsection (14)".

(7) After subsection (13) of that section there is inserted—

"(14) For the purposes of the definition of "designated territory" in subsection (1), an Order in Council may—

(a) designate any qualifying territory, or the Sovereign Base Areas of Akrotiri and Dhekelia, if the Convention is in force there, and

(b) make different designations for the purposes of section 1 and section 15;

and, for the purposes of this subsection and the definition of "Convention adoption" in subsection (1), "the Convention" means the Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993.

An Order in Council under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament."

VALID FROM 30/12/2005

138 Proceedings in Great Britain

Proceedings for an offence by virtue of section 9, 59, 93, 94, 95 or 129—

(a) may not be brought more than six years after the commission of the offence but, subject to that,

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(b) 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.

In relation to Scotland, "the prosecutor" is to be read as "the procurator fiscal".

Amendments etc.

139 Amendments, transitional and transitory provisions, savings and repeals

(1) Schedule 3 (minor and consequential amendments) is to have effect.

(2) Schedule 4 (transitional and transitory provisions and savings) is to have effect.

(3) The enactments set out in Schedule 5 are repealed to the extent specified.

Commencement Information

I2 S. 139(1) in force at 3.2.2003 for specified purposes by S.I. 2003/288, **art. 2(a)**
I3 S. 139(1) in force at 25.2.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(1)(b)**(4)
I4 S. 139(1) in force at 30.4.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(4)(b)-(d)**
I5 S. 139(1) in force at 28.11.2003 for specified purposes by S.I. 2003/3079, **art. 2(1)(b)**(c)
I6 S. 139(1) in force at 1.12.2003 for specified purposes by S.I. 2003/3079, **art. 2(2)(b)**
I7 S. 139(1) in force at 7.12.2004 for specified purposes by S.I. 2004/3203, **art. 2(1)(m)(x)**
I8 S. 139(2) in force at 3.2.2003 for specified purposes by S.I. 2003/288, **art. 2(b)**
I9 S. 139(2) in force at 25.2.2003 for specified purposes by S.I. 2003/366, **art. 2(1)(c)**
I10 S. 139(2) in force at 10.3.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(2)(a)**
I11 S. 139(2) in force at 1.4.2003 for specified purposes by S.I. 2003/366, **art. 2(3)**
I12 S. 139(2) in force at 1.6.2003 for specified purposes by S.I. 2003/366, **art. 2(5)(c)**
I13 S. 139(2) in force at 6.10.2003 for specified purposes for E. by S.I. 2003/366, **art. 2(6)(a)**
I14 S. 139(2) in force at 1.12.2003 for specified purposes for E. by S.I. 2003/3079, **art. 2(2)(c)**
I15 S. 139(2) in force at 7.2.2004 for specified purposes for W. by S.I. 2004/252, **art. 2(d)**
I16 S. 139(2) in force at 1.4.2004 for specified purposes for E. by S.I. 2003/3079, **art. 2(4)(a)**
I17 S. 139(3) in force at 28.11.2003 for specified purposes by S.I. 2003/3079, **art. 2(1)(d)**

CHAPTER 2

FINAL PROVISIONS

140 Orders, rules and regulations

(1) Any power to make subordinate legislation conferred by this Act on the Lord Chancellor, the Secretary of State, the Scottish Ministers, the Assembly or the Registrar General is exercisable by statutory instrument.

(2) A statutory instrument containing subordinate legislation made under any provision of this Act (other than section 14 or 148 or an instrument to which subsection (3) applies) is to be subject to annulment in pursuance of a resolution of either House of Parliament.

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(3) A statutory instrument containing subordinate legislation—
  (a) under section 9 which includes provision made by virtue of section 45(2),
  (b) under section 92(6), 94 or 123(6), or
  (c) which adds to, replaces or omits any part of the text of an Act,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(4) Subsections (2) and (3) do not apply to an Order in Council or to subordinate legislation made—
  (a) by the Scottish Ministers, or
  (b) by the Assembly, unless made jointly by the Secretary of State and the Assembly.

(5) A statutory instrument containing regulations under section 63(2) made by the Scottish Ministers is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(6) The power of the Department of Health, Social Services and Public Safety to make regulations under section 63(2) is to be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/ 1573 (N.I. 12)); and any such regulations are to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if they were statutory instruments within the meaning of that Act.

(7) Subordinate legislation made under this Act may make different provision for different purposes.

(8) A power to make subordinate legislation under this Act (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to—
  (a) those cases subject to specified exceptions, or
  (b) a particular case or class of case.

(9) In this section, "subordinate legislation" does not include a direction.

141 Rules of procedure

(1) The Lord Chancellor may make rules in respect of any matter to be prescribed by rules made by virtue of this Act and dealing generally with all matters of procedure.

(2) Subsection (1) does not apply in relation to proceedings before magistrates' courts, but the power to make rules conferred by section 144 of the Magistrates' Courts Act 1980 (c. 43) includes power to make provision in respect of any of the matters mentioned in that subsection.

(3) In the case of an application for a placement order, for the variation or revocation of such an order, or for an adoption order, the rules must require any person mentioned in subsection (4) to be notified—
  (a) of the date and place where the application will be heard, and
  (b) of the fact that, unless the person wishes or the court requires, the person need not attend.

(4) The persons referred to in subsection (3) are—

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(a) in the case of a placement order, every person who can be found whose consent to the making of the order is required under subsection (3)(a) of section 21 (or would be required but for subsection (3)(b) of that section) or, if no such person can be found, any relative prescribed by rules who can be found,

(b) in the case of a variation or revocation of a placement order, every person who can be found whose consent to the making of the placement order was required under subsection (3)(a) of section 21 (or would have been required but for subsection (3)(b) of that section),

(c) in the case of an adoption order—

(i) every person who can be found whose consent to the making of the order is required under subsection (2)(a) of section 47 (or would be required but for subsection (2)(c) of that section) or, if no such person can be found, any relative prescribed by rules who can be found,

(ii) every person who has consented to the making of the order under section 20 (and has not withdrawn the consent) unless he has given a notice under subsection (4)(a) of that section which has effect,

(iii) every person who, if leave were given under section 47(5), would be entitled to oppose the making of the order.

(5) Rules made in respect of magistrates' courts may provide—

(a) for enabling any fact tending to establish the identity of a child with a child to whom a document relates to be proved by affidavit, and

(b) for excluding or restricting in relation to any facts that may be so proved the power of a justice of the peace to compel the attendance of witnesses.

142 Supplementary and consequential provision

(1) The appropriate Minister may by order make—

(a) any supplementary, incidental or consequential provision,

(b) any transitory, transitional or saving provision,

which he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.

(2) For the purposes of subsection (1), where any provision of an order extends to England and Wales, and Scotland or Northern Ireland, the appropriate Minister in relation to the order is the Secretary of State.

(3) Before making an order under subsection (1) containing provision which would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, the appropriate Minister must consult the Scottish Ministers.

(4) Subsection (5) applies to any power of the Lord Chancellor, the Secretary of State or the Assembly to make regulations, rules or an order by virtue of any other provision of this Act or of Her Majesty to make an Order in Council by virtue of section 125.

(5) The power may be exercised so as to make—

(a) any supplementary, incidental or consequential provision,

(b) any transitory, transitional or saving provision,

which the person exercising the power considers necessary or expedient.

(6) The provision which may be made under subsection (1) or (5) includes provision modifying Schedule 4 or amending or repealing any enactment or instrument.

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In relation to an Order in Council, "enactment" in this subsection includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

(7) The power of the Registrar General to make regulations under Chapter 5 of Part 1 may, with the approval of the Chancellor of the Exchequer, be exercised so as to make—

(a) any supplementary, incidental or consequential provision,

(b) any transitory, transitional or saving provision,

which the Registrar General considers necessary or expedient.

143 Offences by bodies corporate and unincorporated bodies

(1) 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, secretary or other similar officer of the body, or a person purporting to act in any such capacity, that person as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director of a body corporate.

(3) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings in England and Wales or Northern Ireland, any rules of court relating to the service of documents have effect as if that body were a corporation.

(4) A fine imposed on an unincorporated body on its conviction of an offence under this Act is to be paid out of the funds of that body.

(5) If an unincorporated body is charged with an offence under this Act—

(a) in England and Wales, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (procedure on charge of an offence against a corporation),

(b) in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (procedure on charge of an offence against a corporation),

have effect in like manner as in the case of a corporation so charged.

(6) Where an offence under this Act committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

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144 General interpretation etc.

(1) In this Act—

"appropriate Minister" means—

(a) in relation to England, Scotland or Northern Ireland, the Secretary of State,

(b) in relation to Wales, the Assembly,

and in relation to England and Wales means the Secretary of State and the Assembly acting jointly,

"the Assembly" means the National Assembly for Wales,

"body" includes an unincorporated body,

"by virtue of" includes "by" and "under",

"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 on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993,

"Convention adoption order" means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c. 18) (regulations giving effect to the Convention), is made as a Convention adoption order,

"Convention country" means a country or territory in which the Convention is in force,

"court" means, subject to any provision made by virtue of Part 1 of Schedule 11 to the 1989 Act, the High Court, a county court or a magistrates' court,

"enactment" includes an enactment comprised in subordinate legislation,

"fee" includes expenses,

"guardian" has the same meaning as in the 1989 Act and includes a special guardian within the meaning of that Act,

"information" means information recorded in any form,

"local authority" means any unitary authority, or any county council so far as they are not a unitary authority,

"Northern Irish adoption agency" means an adoption agency within the meaning of Article 3 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)),

"Northern Irish adoption order" means an order made, or having effect as if made, under Article 12 of the Adoption (Northern Ireland) Order 1987,

"notice" means a notice in writing,

"registration authority" (in Part 1) has the same meaning as in the Care Standards Act 2000 (c. 14),

"regulations" means regulations made by the appropriate Minister, unless they are required to be made by the Lord Chancellor, the Secretary of State or the Registrar General,

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by marriage,

"rules" means rules made under section 141(1) or made by virtue of section 141(2) under section 144 of the Magistrates' Courts Act 1980 (c. 43),

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"Scottish adoption order" means an order made, or having effect as if made, under section 12 of the Adoption (Scotland) Act 1978 (c. 28),

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30),

"unitary authority" means—

(a) the council of any county so far as they are the council for an area for which there are no district councils,

(b) the council of any district comprised in an area for which there is no county council,

(c) the council of a county borough,

(d) the council of a London borough,

(e) the Common Council of the City of London.

(2) Any power conferred by this Act to prescribe a fee by Order in Council or regulations includes power to prescribe—

(a) a fee not exceeding a prescribed amount,

(b) a fee calculated in accordance with the Order or, as the case may be, regulations,

(c) a fee determined by the person to whom it is payable, being a fee of a reasonable amount.

(3) In this Act, "Scottish adoption agency" means—

(a) a local authority, or

(b) a voluntary organisation providing a registered adoption service;

but in relation to the provision of any particular service, references to a Scottish adoption agency do not include a voluntary organisation unless it is registered in respect of that service or a service which, in Scotland, corresponds to that service.

Expressions used in this subsection have the same meaning as in the Regulation of Care (Scotland) Act 2001 (asp 4) and "registered" means registered under Part 1 of that Act.

(4) In this Act, a couple means—

(a) a married couple, or

(b) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.

(5) Subsection (4)(b) does not include two people one of whom is the other's parent, grandparent, sister, brother, aunt or uncle.

(6) References to relationships in subsection (5)—

(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for adoption, and

(b) include the relationship of a child with his adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(7) For the purposes of this Act, a person is the partner of a child's parent if the person and the parent are a couple but the person is not the child's parent.

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145 Devolution: Wales

(1) The references to the Adoption Act 1976 (c. 36) and to the 1989 Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) are to be treated as referring to those Acts as amended by virtue of this Act.

(2) This section does not affect the power to make further Orders varying or omitting those references.

(3) In Schedule 1 to that Order, in the entry for the Adoption Act 1976, "9" is omitted.

(4) The functions exercisable by the Assembly under sections 9 and 9A of the Adoption Act 1976 (by virtue of paragraphs 4 and 5 of Schedule 4 to this Act) are to be treated for the purposes of section 44 of the Government of Wales Act 1998 (c. 38) (parliamentary procedures for subordinate legislation) as if made exercisable by the Assembly by an Order in Council under section 22 of that Act.

146 Expenses

There shall be paid out of money provided by Parliament—

(a) any expenditure incurred by a Minister of the Crown by virtue of this Act,

(b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

147 Glossary

Schedule 6 (glossary) is to have effect.

148 Commencement

(1) This Act (except sections 116 and 136, this Chapter and the provisions mentioned in subsections (5) and (6)) is to come into force on such day as the Secretary of State may by order appoint.

(2) Before making an order under subsection (1) (other than an order bringing paragraph 53 of Schedule 3 into force) the Secretary of State must consult the Assembly.

(3) Before making an order under subsection (1) bringing sections 123 and 124 into force, the Secretary of State must also consult the Scottish Ministers and the Department of Health, Social Services and Public Safety.

(4) Before making an order under subsection (1) bringing sections 125 to 131 into force, the Secretary of State must also consult the Scottish Ministers.

(5) The following are to come into force on such day as the Scottish Ministers may by order appoint—

(a) section 41(5) to (9), so far as relating to Scotland,

(b) sections 132 to 134,

(c) paragraphs 21 to 35 and 82 to 84 of Schedule 3,

(d) paragraphs 15 and 23 of Schedule 4,

(e) the entries in Schedule 5, so far as relating to the provisions mentioned in paragraphs (c) and (d),

(f) section 139, so far as relating to the provisions mentioned in the preceding paragraphs.

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(6) Sections 2(6), 3(3) and (4), 4 to 17, 27(3), 53(1) to (3), 54, 56 to 65 and 98, paragraphs 13, 65, 66 and 111 to 113 of Schedule 3 and paragraphs 3 and 5 of Schedule 4 are to come into force on such day as the appropriate Minister may by order appoint.

149 Extent

(1) The amendment or repeal of an enactment has the same extent as the enactment to which it relates.

(2) Subject to that and to the following provisions, this Act except section 137 extends to England and Wales only.

(3) The following extend also to Scotland and Northern Ireland—
- (a) sections 63(2) to (5), 65(2)(a) and (b) and (3), 123 and 124,
- (b) this Chapter, except sections 141 and 145.

(4) The following extend also to Scotland—
- (a) section 41(5) to (9),
- (b) sections 125 to 131,
- (c) section 138,
- (d) section 139, so far as relating to provisions extending to Scotland.

(5) In Schedule 4, paragraph 23 extends only to Scotland.

150 Short title

This Act may be cited as the Adoption and Children Act 2002.

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