Adoption and Children (Scotland) Act 2007

2007 asp 4

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th December 2006 and received Royal Assent on 15th January 2007

An Act of the Scottish Parliament to restate and amend the law relating to adoption; to make other provision in relation to the care of children; to enable provision to be made in relation to allowances in respect of certain children; and for connected purposes.

Modifications etc. (not altering text)

C1 Act applied (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), **regs. 53-61**

C2 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)

PART 1

ADOPTION

CHAPTER 1

THE ADOPTION SERVICE

The adoption service

1 Duty of local authority to provide adoption service

(1) Each local authority must—

(a) to the extent that it already provides an adoption service in its area, continue to do so, and

(b) to the extent that it does not provide such a service in its area, provide such a service there.

Status: *Point in time view as at 01/10/2009.*
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(2) In this Act, "adoption service" means services designed to meet the needs, in relation to adoption, of persons mentioned in subsection (3).

(3) Those persons are—

(a) children who may be adopted

(b) persons who have been adopted,

(c) parents and guardians of children mentioned in paragraph (a),

(d) natural parents of persons who have been adopted,

(e) persons who, before the placing of a child for adoption or the adoption of a child, treated the child as their child,

(f) siblings (whether of the whole-blood or half-blood), natural grandparents and former guardians of—

(i) children mentioned in paragraph (a), or

(ii) persons mentioned in paragraph (b),

(g) persons who may adopt a child,

(h) persons who have adopted a child,

(i) in relation to persons mentioned in paragraph (g) or (h), children of, or children treated as children of, such persons, and

(j) any other persons who are—

(i) affected by the placing, or proposed placing, of a child for adoption, or

(ii) affected by an adoption.

(4) An adoption service includes, in particular, services consisting of or including—

(a) arrangements for assessing children who may be adopted,

(b) arrangements for assessing prospective adopters,

(c) arrangements for placing children for adoption,

(d) the provision of information about adoption to any of the persons mentioned in subsection (3), and

(e) adoption support services.

(5) In this Act, "adoption support services" means services consisting of or including the provision of—

(a) counselling to any of the persons mentioned in subsection (3),

(b) guidance about adoption to such persons,

(c) any other assistance in relation to the adoption process that the local authority providing an adoption service in a particular case considers appropriate in the circumstances of that case.

Commencement Information

I1 S. 1 in force at 28.9.2009 by 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)

2 Carrying out of duties imposed by section 1

(1) For the purpose of carrying out the duties imposed by section 1(1) efficiently and effectively, a local authority must have regard to—

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(a) the other services that it provides in its area in carrying out the functions of a local authority under any of the enactments mentioned in section 5(1B) of the Social Work (Scotland) Act 1968 (c. 49) (power of the Scottish Ministers to issue certain directions) including, in particular, those functions in so far as they relate to children, and

(b) any registered adoption service provided there.

(2) A local authority may carry out the duties imposed by section 1(1) by securing the provision of its adoption service by a registered adoption service.

(3) In this section, "registered adoption service" means an adoption service provided as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8) and registered under Part 1 of that Act.

Commencement Information

I2 S. 2(1)(2) in force at 28.9.2009 by 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)

I3 S. 2(3) in force at 7.4.2008 for specified purposes by S.S.I. 2008/130, art. 2, **Sch.**

I4 S. 2(3) in force at 28.9.2009 in so far as not already in force by 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)

3 Adoption service: regulations

The Scottish Ministers may by regulations—

(a) amend subsection (4) or (5) of section 1 by—

(i) adding further services,

(ii) modifying the services mentioned in those subsections,

(b) make further provision about adoption services.

Commencement Information

I5 S. 3 in force at 28.9.2009 in so far as not already in force by 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)

I6 S. 3(b) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

4 Local authority plans

(1) Before the expiry of such period as the Scottish Ministers may direct, each local authority must prepare and publish a plan for the provision of the adoption service which it is required by section 1(1) to continue to provide, or to provide, in its area.

(2) Each local authority—

(a) must from time to time review the plan published by it under subsection (1), and

(b) may, having regard to any such review, prepare and publish—

(i) modifications of the plan, or

(ii) a plan in substitution for the plan.

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(3) In preparing a plan, or carrying out a review, under this section a local authority must consult—

(a) each Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29) which provides services under that Act in the area of the local authority,

(b) such voluntary organisations as appear to the authority to represent the interests of persons who use, or are likely to use, the adoption service in that area,

(c) such voluntary organisations as appear to the authority to provide services in that area which, were they to be provided by the authority, might be an adoption service, and

(d) such other persons as may be prescribed by regulations made by the Scottish Ministers.

(4) A local authority may incorporate a plan published under subsection (1) in any plan published by the authority under section 19(1) of the 1995 Act (local authority plans for services for children).

(5) Where a local authority incorporates a plan as mentioned in subsection (4), it need not separately publish a plan under subsection (1).

(6) Subsections (2) and (5) apply to a plan modified or substituted under subsection (2) as they apply to a plan published under subsection (1).

(7) The Scottish Ministers may give a local authority directions as to the carrying out of its functions under subsection (2).

(8) The Scottish Ministers may vary or revoke any direction given under subsection (7).

Commencement Information

I7 S. 4 in force at 28.9.2009 by 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)

5 Guidance

(1) Subsection (2) applies where a local authority is carrying out its function under section 1 to continue to provide, or to provide, an adoption service or to secure the provision of such a service.

(2) The local authority must have regard to any guidance given by the Scottish Ministers.

(3) Guidance such as is mentioned in subsection (2) may, in particular, contain provision in relation to—

(a) how a local authority should assess (or reassess) the needs of a person for adoption support services,

(b) how the power conferred by section 9(1)(b) should be exercised,

(c) the classes of person in relation to whom that power should be exercised,

(d) how responsibility for the provision of an adoption service should be transferred from one local authority to another.

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(4) The Scottish Ministers may vary or revoke any guidance such as is mentioned in subsection (2).

Commencement Information

I8 S. 5 in force at 28.9.2009 by 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)

6 Assistance in carrying out functions under sections 1 and 4

(1) Where it appears to a local authority that an appropriate person could assist the authority in carrying out any of its functions under section 1 or 4, it may require the person to assist the authority in the way specified in the requirement.

(2) An appropriate person need not comply with a requirement made by virtue of subsection (1) if—

(a) it would not be reasonably practicable to do so,

(b) doing so would be incompatible with the person's functions (whether statutory or otherwise), or

(c) where the person is not a natural person, doing so would unduly prejudice the carrying out of such functions.

(3) For the purposes of this section, a person is "appropriate" if the person is—

(a) another local authority,

(b) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),

(c) such other person as may be prescribed by regulations made by the Scottish Ministers.

Commencement Information

I9 S. 6 in force at 28.9.2009 by 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)

7 Meaning of "adoption service" in Regulation of Care (Scotland) Act 2001

In section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8) (meaning of "care services"), for subsections (11) and (12) substitute—

"(11) An adoption service is any service which is—

(a) provided by a local authority under subsection (1) of section 1 of the Adoption and Children (Scotland) Act 2007 (asp 4); or

(b) provided by a person other than a local authority and which consists of, or includes, services mentioned in subsection (4) of that section (the reference in subsection (5) of that section to a local authority being taken, for the purposes of this paragraph, to be a reference to a person other than a local authority), (whether the person functions generally or in relation to a service provided, or to be provided, under that section).

(12) For the purposes of subsection (11)(b) above—

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(a) the making by a person of arrangements for the adoption of a child by a relevant person, or

(b) the placing by a person of a child for adoption with a relevant person,

is not an adoption service.

(12A) In subsection (12) above, "relevant person" means—

(a) a parent of the child,

(b) any other relative of the child, or

(c) where a parent of the child is a member of a relevant couple, the other member of the couple.

(12B) In subsection (12A) above—

"relative" has the meaning given by section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4),

"relevant couple" is to be construed in accordance with section 29(3) of that Act.".

Commencement Information

I10 S. 7 in force at 28.9.2009 by 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)

8 Adoption agencies: regulations about carrying out of functions

(1) The Scottish Ministers may make regulations for any purpose relating to the carrying out of its functions by a registered adoption service.

(2) The Scottish Ministers may make regulations with respect to the carrying out by local authorities of their functions in relation to adoption.

(3) Regulations under this section may in particular make provision for or in connection with—

(a) specifying circumstances in which a local authority proposing to make arrangements for the adoption of a child must apply for a permanence order which includes provision granting authority for the child to be adopted,

(b) requiring such an application to be made within a period specified in the regulations.

Commencement Information

I11 S. 8 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I12 S. 8 in force at 28.9.2009 in so far as not already in force by 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)

Adoption support services

9 Assessment of needs for adoption support services

(1) A local authority—

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(a) must, on the request of a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, make an assessment of the needs of the person for adoption support services,

(b) may, on the request of a person mentioned in paragraph (j) of that subsection, make an assessment of the needs of the person for such services.

(2) Where a local authority makes an assessment of the needs of a person for adoption support services under subsection (1), the authority must decide whether the needs of the person call for the provision of such services.

(3) A local authority making an assessment of needs under subsection (1) must—

(a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and

(b) have regard to such matters as may be so prescribed.

Modifications etc. (not altering text)

C3 S. 9 applied (28.9.2009) by Adoption Support Services and Allowances (Scotland) Regulations 2009 (S.S.I. 2009/152), regs. 1, **4**

Commencement Information

I13 S. 9(1)(2) in force at 28.9.2009 by 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)

I14 S. 9(3) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I15 S. 9(3) in force at 28.9.2009 in so far as not already in force by 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)

10 Provision of services

(1) On the request of a person mentioned in subsection (3) of section 1, a local authority must provide adoption services of a type mentioned in paragraph (d) of subsection (4) of that section to the person.

(2) On the request of a person mentioned in paragraph (a), (c) or (g) of subsection (3) of section 1, a local authority—

(a) must provide adoption services of a type mentioned in paragraphs (a) to (c) of subsection (4) of that section to the person, and

(b) may, without prejudice to subsection (4)(a), provide adoption support services to the person.

(3) For the purposes of subsection (2), it is immaterial whether the local authority has made an assessment of the needs of the person under section 9(1)(a).

(4) Where a local authority decides under section 9(2) that the provision of adoption support services is called for in respect of—

(a) a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, the authority must provide the services to the person,

(b) a person mentioned in paragraph (j) of that subsection, the authority may provide the services to the person.

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Commencement Information

I16 S. 10 in force at 28.9.2009 by 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)

11 Urgent provision

(1) If in the opinion of a local authority a person mentioned in subsection (3) of section 1 requires adoption support services as a matter of urgency, nothing in section 9 prevents the authority from providing, or arranging for the provision of, those services for the person without first carrying out an assessment under that section of the person's needs for adoption support services.

(2) If by virtue of subsection (1) a local authority provides, or arranges for the provision of, adoption support services the authority must, as soon as is reasonably practicable after such provision, make an assessment of the person's needs for adoption support services.

Commencement Information

I17 S. 11 in force at 28.9.2009 by 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)

12 Power to provide payment to person entitled to adoption support service

(1) Subsection (2) applies where a local authority—

(a) has, in respect of a person, an obligation to provide, or secure the provision of, an adoption support service under this Part, or

(b) has a power so to provide and determines it should provide.

(2) Subject to subsection (4), the authority may, after having regard to the matters mentioned in subsection (3), provide the person with a payment instead of the service.

(3) Those matters are—

(a) the person's eligibility for assistance from any other body,

(b) where the person is so eligible, the availability to the person of that assistance at the time when the service might have been provided to the person by the authority,

(c) the ability of the authority to provide, or secure the provision of, the service, and

(d) the person's need for the service.

(4) A payment under subsection (2) may be made subject to such conditions (including conditions as to repayment) as the authority considers reasonable.

(5) In imposing conditions under subsection (4), the authority must have regard to the person's eligibility for assistance from any other body.

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Commencement Information

I18 S. 12 in force at 28.9.2009 by 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)

Regulations

13 Regulations

(1) The Scottish Ministers may by regulations make provision for or in connection with—

(a) determining in circumstances specified in the regulations which local authority is, or may become, responsible for—

(i) the provision of an adoption service,

(ii) the making of an assessment of needs under section 9(1)(a),

(b) determining the time at which, and the circumstances in which, a local authority's duty to provide an adoption service ends,

(c) specifying the circumstances in which a local authority may continue to provide an adoption service after the time determined by virtue of paragraph (b) has passed,

(d) specifying the arrangements a local authority may make when a person in respect of whom the authority provides, or has a power or a duty to provide, an adoption service moves outwith the authority's area,

(e) specifying the persons with whom such arrangements may be made,

(f) assessing the needs for adoption support services of persons who have moved or who intend to move—

(i) from one local authority area to another,

(ii) from outwith Scotland to Scotland.

(2) The power conferred by subsection (1) may be exercised so as to make different provision for different adoption services.

Commencement Information

I19 S. 13 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I20 S. 13 in force at 28.9.2009 in so far as not already in force by 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)

CHAPTER 2

THE ADOPTION PROCESS

Modifications etc. (not altering text)

C4 Pt. 1 Ch. 2 applied in part (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(1)**

Status: *Point in time view as at 01/10/2009.*
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Preliminary

14 Considerations applying to the exercise of powers

(1) Subsections (2) to (4) apply where a court or adoption agency is coming to a decision relating to the adoption of a child.

(2) The court or adoption agency must have regard to all the circumstances of the case.

(3) The court or adoption agency is to regard the need to safeguard and promote the welfare of the child throughout the child's life as the paramount consideration.

(4) The court or adoption agency must, so far as is reasonably practicable, have regard in particular to—

(a) the value of a stable family unit in the child's development,

(b) the child's ascertainable views regarding the decision (taking account of the child's age and maturity),

(c) the child's religious persuasion, racial origin and cultural and linguistic background, and

(d) the likely effect on the child, throughout the child's life, of the making of an adoption order.

(5) Where an adoption agency is placing a child for adoption it must have regard, so far as is reasonably practicable, to the views of the parents, guardians and other relatives of the child.

(6) In carrying out the duties imposed on it by subsections (2) to (4) an adoption agency must, before making any arrangements for the adoption of a child, consider whether adoption is likely best to meet the needs of the child or whether there is some better practical alternative for the child.

(7) If an adoption agency concludes that there is an alternative such as is mentioned in subsection (6), it must not make arrangements for the adoption of the child.

(8) Without prejudice to the generality of subsection (4)(b), a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection.

Modifications etc. (not altering text)

C5 S. 14(1) modified (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(3)**

Commencement Information

I21 S. 14 in force at 28.9.2009 by 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)

Pre-adoption requirements

15 Child to live with adopters before adoption order made

(1) Where—

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(a) subsection (2) applies, an adoption order may not be made in relation to a child unless the conditions in subsection (3) are met,

(b) subsection (2) does not apply, an adoption order may not be made in relation to the child unless the condition in subsection (4) is met.

(2) This subsection applies if—

(a) the person applying for the adoption order (the "applicant"), or one of the applicants, is a parent, step-parent or relative of the child, or

(b) the child was placed with the applicant, or applicants, by an adoption agency.

(3) The conditions are—

(a) that the child is at least 19 weeks old, and

(b) that at all times during the period of 13 weeks immediately preceding the making of the order the child's home was with the applicants.

(4) The condition is that at all times during the period of 12 months immediately preceding the making of the order the child's home was with the applicants.

(5) In relation to—

(a) an adoption proposed to be effected by a Convention adoption order, or

(b) an adoption of a child habitually resident outwith the British Islands which is proposed to be effected by an adoption order other than a Convention adoption order,

subsection (3)(b) has effect as if the reference to a period of 13 weeks were a reference to a period of 6 months.

Modifications etc. (not altering text)

C6 S. 15 excluded (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(4)(a)**

Commencement Information

I22 S. 15 in force at 28.9.2009 by 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)

16 Home visits

(1) Where a child was placed for adoption with the applicants by an adoption agency, an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (2) is met.

(2) The condition is that sufficient opportunities to see the child with the applicant or, in the case of an application by two applicants, both of them together in the home environment have been given to the agency.

(3) Where the child was not placed for adoption with the applicants by an adoption agency, an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (4) is met.

(4) The condition is that sufficient opportunities to see the child with the applicant or, in the case of an application by two applicants, both of them together in the home environment have been given—

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(a) where the home is in Scotland, to the local authority within whose area the home is situated,

(b) where the home is outwith Scotland, to any local authority.

Commencement Information

I23 S. 16 in force at 28.9.2009 by 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)

17 Reports where child placed by agency

(1) Subsection (2) applies where an application for an adoption order relates to a child placed for adoption by an adoption agency.

(2) The agency must—

(a) submit to the court a report on—

(i) the suitability of the applicants, and

(ii) any other matters relevant to the operation of section 14, and

(b) assist the court in any manner the court directs.

Commencement Information

I24 S. 17 in force at 28.9.2009 by 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)

18 Notification to local authority of adoption application

(1) Subsection (2) applies where a child was not placed for adoption with the applicants by an adoption agency.

(2) An adoption order may not be made in relation to the child unless the applicants have, at least 3 months before the date of the order, given notice to the appropriate local authority of their intention to apply for the order.

(3) In subsection (2), "appropriate local authority" means—

(a) where the applicants have their home in Scotland, the local authority within whose area the home is situated,

(b) where they have their home outwith Scotland, any local authority.

Commencement Information

I25 S. 18 in force at 28.9.2009 by 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)

19 Notice under section 18: local authority's duties

(1) This section applies where a local authority receives a notice under section 18 in respect of a child.

(2) On receipt of the notice the authority must—

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(a) investigate the matter, and
(b) submit to the court a report of the investigation.

(3) The local authority must in particular investigate—
(a) so far as is reasonably practicable, the suitability of the applicants and any other matters relevant to the operation of section 14 in relation to the application,
(b) whether there has been a contravention of section 75 in relation to the child, and
(c) whether there has been a failure to comply with section 76(2) in relation to the child.

(4) If the authority knows that the child is being looked after by another local authority, it must, before the expiry of the period of 7 days beginning with the day on which it receives the notice, give the other authority a copy of the notice.

Commencement Information
I26 S. 19 in force at 28.9.2009 by 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)

Restrictions on removal of children placed for adoption

20 Restrictions on removal: child placed for adoption with consent

(1) Subsection (2) applies where—
(a) an adoption agency has placed a child for adoption with persons ("prospective adopters"), and
(b) each parent or guardian of the child has, in accordance with such provision as may be made by regulations by the Scottish Ministers, consented to the placement (whether or not each parent or guardian knows the identity of the prospective adopters).

(2) A parent or guardian of the child must not remove the child from the care of the prospective adopters without the leave of—
(a) the adoption agency, or
(b) the appropriate court.

(3) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

Commencement Information
I27 S. 20(1) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**
I28 S. 20(1) in force at 28.9.2009 in so far as not already in force by 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)
I29 S. 20(2)(3) in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

21 Restrictions on removal: notice of intention to adopt given

(1) Subsection (2) applies where—

(a) persons ("prospective adopters") give notice under section 18(2) in relation to a child, and

(b) during the period of 5 years immediately preceding the giving of notice, the child's home has been with the prospective adopters.

(2) Except where subsection (3) applies, a person may not remove the child from the care of the prospective adopters during the period beginning with the giving of notice and ending with the relevant act.

(3) This subsection applies if—

(a) the prospective adopters consent to the removal,

(b) a court having jurisdiction to make adoption orders grants leave for the removal,

(c) the child is arrested, or

(d) the removal is authorised by virtue of any enactment.

(4) For the purposes of subsection (2), "relevant act" means—

(a) where before the expiry of the 3 month period the prospective adopters apply for an adoption order in relation to the child to whom the notice relates, the making of the application for the adoption order,

(b) where the prospective adopters do not apply for an adoption order before the expiry of that period, the expiry of that period.

(5) In this section, "3 month period" means the period of 3 months beginning with the day on which the local authority receives the notice.

(6) If during—

(a) the 3 month period, or

(b) the period of 28 days beginning with the expiry of the 3 month period,

the prospective adopters give a further notice under section 18(2) to a local authority in respect of the same child, subsection (2) does not apply.

(7) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

Modifications etc. (not altering text)

C7 S. 21 excluded (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(4)(b)**

C8 S. 21(6) excluded (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **6(2)**

Commencement Information

I30 S. 21 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

22 Restrictions on removal: application for adoption order pending

(1) Subsection (2) applies where—

(a) an application for an adoption order in relation to a child has been made to, but not determined by, the appropriate court, and

(b) during the period of 5 years immediately preceding the making of the application, the child's home has been with the persons applying for the order (the "prospective adopters").

(2) Except where subsection (3) applies, a person may not remove the child from the care of the prospective adopters.

(3) This subsection applies if—

(a) the prospective adopters consent to the removal,

(b) the court determining the application grants leave for the removal,

(c) the child is arrested, or

(d) the removal is authorised by virtue of any enactment.

(4) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

Modifications etc. (not altering text)

C9 S. 22 excluded (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(4)(c)**

Commencement Information

I31 S. 22 in force at 28.9.2009 by 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)

23 Restrictions on removal of child looked after by local authority

(1) Subsection (2) applies where—

(a) section 21(1) or 22(1) applies,

(b) before the child's home came to be with the prospective adopters, the child was looked after by a local authority, and

(c) the child continues to be looked after by a local authority.

(2) Except where subsection (3) applies, the local authority must not remove the child from the care of the prospective adopters.

(3) This subsection applies if—

(a) the removal is made in accordance with section 25 or 26,

(b) an appropriate court grants leave for the removal, or

(c) the removal is authorised by virtue of Chapter 2 or 3 of Part II of the 1995 Act.

Commencement Information

I32 S. 23 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Return of children

24 Return of child removed in breach of certain provisions

(1) The relevant court may, on the application of a person from whose care a child has been removed in breach of any of the relevant provisions, order the person who has so removed the child to return the child to the applicant.

(2) The relevant court may, on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's care in breach of any of the relevant provisions, by order direct that other person not to remove the child from the applicant's care in breach of the provision concerned.

(3) The "relevant court" is—

(a) if there is pending in respect of the child an application for an adoption order or a permanence order, the court in which the application is pending,

(b) in any other case—

(i) the Court of Session, or

(ii) the sheriff court of the sheriffdom within which the applicant resides.

(4) The relevant provisions are—

(a) sections 20, 21, 22 and 23,

(b) sections 30, 34, 35 and 36 of the 2002 Act,

(c) Articles 28 and 29 of the Northern Ireland Order.

Modifications etc. (not altering text)

C10 S. 24 excluded (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(4)(d)**

Commencement Information

I33 S. 24 in force at 28.9.2009 by 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)

25 Return of child placed for adoption by adoption agency

(1) This section applies where—

(a) in pursuance of arrangements made by an adoption agency or a registered adoption society for the adoption of a child by persons (the "prospective adopters"), the child has been placed with the prospective adopters, and

(b) no adoption order has been made in relation to the child on the application of the prospective adopters.

(2) The prospective adopters may give notice to the agency or society of their intention not to retain the care of the child.

(3) The agency or society may give notice to the prospective adopters of its intention not to allow the child to remain in the care of the prospective adopters.

(4) If an application for an adoption order in relation to the child has been made by the prospective adopters, notice under subsection (3) may be given only with leave of the court which is hearing the application.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(5) Subsection (6) applies where—
- (a) notice is given by virtue of subsection (2) or (3), or
- (b) an application for an adoption order made by the prospective adopters is refused or withdrawn.

(6) The prospective adopters must, before the expiry of the relevant period, return the child to—
- (a) the agency or, as the case may be, society, or
- (b) a person nominated by the agency or, as the case may be, society for the purposes of this section.

(7) In subsection (6), "relevant period" means—
- (a) in the case mentioned in paragraph (a) of subsection (5), the period of 7 days beginning with the day on which notice was given,
- (b) in the case mentioned in paragraph (b) of that subsection—
  - (i) the period of 7 days beginning with the day on which the application was refused or withdrawn, or
  - (ii) if, before the expiry of the period mentioned in sub-paragraph (i), the court makes an order extending that period for a period (not exceeding 6 weeks) specified in the order, the period so specified.

(8) A person who fails to return a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

(9) The court by which a person is convicted by virtue of subsection (8) may order that the child in respect of whom the offence is committed be returned to the child's parent or guardian or, as the case may be, the adoption agency or registered adoption society.

Modifications etc. (not altering text)

C11 S. 25 applied (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **6(3)**

C12 S. 25 excluded (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(4)(e)**

Commencement Information

I34 S. 25 in force at 28.9.2009 by 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)

Adoption not proceeding: arrangements

26 Looked after children: adoption not proceeding

(1) This section applies where—
- (a) persons ("prospective adopters") give notice under section 18(2) in relation to a child,
- (b) the child has a home with the prospective adopters,

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Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(c) the child was not placed with the prospective adopters in pursuance of arrangements made by an adoption agency or a registered adoption society for the adoption of the child by the prospective adopters, and

(d) the child is being looked after by a local authority (the "relevant local authority").

(2) The prospective adopters may give notice to the relevant local authority of their intention not to retain the care of the child.

(3) The authority may give notice to the prospective adopters of its intention not to allow the child to remain in the care of the prospective adopters.

(4) Where notice is given by virtue of subsection (2) or (3) the prospective adopters must, before the expiry of the period of 7 days beginning with the day on which notice is given, deliver the child to—

(a) the authority, or

(b) a person nominated by the authority for the purposes of this section.

(5) If an application for an adoption order in relation to the child has been made by the prospective adopters, notice under subsection (3) may be given only with leave of the court which is hearing the application.

(6) If an application for an adoption order in relation to the child is refused or withdrawn, the child—

(a) must be delivered to the relevant local authority only if the authority requires it, and

(b) where such a requirement is made, must be delivered before the expiry of the period of 7 days beginning with the day on which the requirement is made.

(7) Where an application by the prospective adopters for an adoption order in relation to the child has been made but not disposed of, any right of the relevant local authority to require the child to be delivered otherwise than by virtue of this section is suspended.

(8) A person who fails to deliver a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

(9) The court by which a person is convicted by virtue of subsection (8) may order that the child in respect of whom the offence is committed be delivered to the child's parent or guardian or, as the case may be, the relevant local authority.

(10) In this section "registered adoption society" has the meaning given by section 2(2) of the 2002 Act.

Modifications etc. (not altering text)

C13 S. 26 excluded (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(4)(f)**

Commencement Information

I35 S. 26 in force at 28.9.2009 by 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)

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Contravention of sections 30 to 36 of 2002 Act

27 Contravention of sections 30 to 36 of 2002 Act

(1) A person who contravenes any of the provisions of the 2002 Act mentioned in subsection (2) commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

(2) Those provisions 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),
- (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).

Commencement Information

I36 S. 27 in force at 28.9.2009 by 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)

The making of adoption orders

28 Adoption orders

(1) An adoption order is an order made by the appropriate court on an application under section 29 or 30 vesting the parental responsibilities and parental rights in relation to a child in the adopters or adopter.

(2) The court must not make an adoption order unless it considers that it would be better for the child that the order be made than not.

(3) An adoption order may contain such terms and conditions as the court thinks fit.

(4) An adoption order may be made in respect of a person aged 18 or over if the application for the order was made when the person was under 18.

(5) An adoption order may be made in respect of a child who is subject to a permanence order.

(6) An adoption order may be made even if the child to be adopted is already an adopted child.

(7) An adoption order may not be made in respect of a person who is or has been—
- (a) married, or
- (b) a civil partner.

Modifications etc. (not altering text)

C14 S. 28 applied (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(2)(a)**

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Commencement Information

I37 S. 28 in force at 28.9.2009 by 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)

29 Adoption by certain couples

(1) Where—

(a) each member of a relevant couple is aged 21 or over,

(b) neither member of the couple is a parent of the child to be adopted, and

(c) one of the conditions in subsection (2) is met,

an adoption order may be made on the application of the couple.

(2) Those conditions are—

(a) that a member of the couple is domiciled in a part of the British Islands,

(b) that each member of the couple has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application.

(3) A couple is "relevant" for the purposes of this section if its members are—

(a) persons who are married to each other,

(b) persons who are civil partners of each other,

(c) persons who are living together as if husband and wife in an enduring family relationship, or

(d) persons who are living together as if civil partners in an enduring family relationship.

(4) In this section "parent", in relation to the child to be adopted, means a parent who has any parental responsibilities or parental rights in relation to the child.

Modifications etc. (not altering text)

C15 S. 29 applied (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(2)(b)**

Commencement Information

I38 S. 29 in force at 28.9.2009 by 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)

30 Adoption by one person

(1) An adoption order may be made on the application of a person ("A") if—

(a) A is aged 21 or over,

(b) subsection (2), (3), (4) or (5) applies,

(c) one of the conditions in subsection (6) is met, and

(d) where A is a natural parent of the child to be adopted, subsection (7) applies.

(2) This subsection applies if A is not a member of a relevant couple.

(3) This subsection applies if—

(a) A and another person ("B") are a relevant couple,

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(b) B is aged 18 or over,

(c) B is a parent of the child to be adopted, and

(d) B—

(i) is domiciled in a part of the British Islands, or

(ii) has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application.

(4) This subsection applies if—

(a) A and B are—

(i) married to each other, or

(ii) civil partners of each other,

(b) B is not a parent of the child to be adopted, and

(c) the court is satisfied that—

(i) B cannot be found,

(ii) A and B have separated and are living apart and the separation is likely to be permanent, or

(iii) B is by reason of ill-health (whether physical or mental) incapable of making an application for an adoption order.

(5) This subsection applies if—

(a) A and B are a relevant couple by virtue of being members of a couple falling within paragraph (c) or (d) of subsection (3) of section 29,

(b) B is not a parent of the child to be adopted, and

(c) the court is satisfied that B is by reason of ill-health (whether physical or mental) incapable of making an application for an adoption order.

(6) Those conditions are—

(a) that A is domiciled in a part of the British Islands,

(b) that A has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application.

(7) This subsection applies if the court is satisfied that—

(a) the other natural parent is dead,

(b) the other natural parent cannot be found,

[[F1](c) by virtue of the provisions specified in subsection (7A), there is no other parent, or**]**

(d) the exclusion of the other natural parent from the application for adoption is justified on some other ground.

[[F2](7A) The provisions referred to in subsection (7)(c) are—

(a) section 28 of the Human Fertilisation and Embryology Act 1990 (disregarding subsections (5A) to (5I) of that section), or

(b) sections 34 to 47 of the Human Fertilisation and Embryology Act 2008 (disregarding sections 39, 40 and 46 of that Act).**]**

(8) In subsections (3)(c), (4)(b) and (5)(b), "parent" has the meaning given by section 29(4).

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Textual Amendments

F1 S. 30(7)(c) substituted (6.4.2009 for specified purposes, 1.9.2009 in so far as not already in force) by Human Fertilisation and Embryology Act 2008 (c. 22), s. 68(2), **Sch. 6 para. 56(2)**; S.I. 2009/479, art. 6(1)(e)(2) (with art. 7, Sch.)

F2 S. 30(7A) inserted (6.4.2009 for specified purposes, 1.9.2009 in so far as not already in force) by Human Fertilisation and Embryology Act 2008 (c. 22), s. 68(2), **Sch. 6 para. 56(3)**; S.I. 2009/479, art. 6(1)(e)(2) (with art. 7, Sch.)

Modifications etc. (not altering text)

C16 S. 30 applied (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(2)(c)**

Commencement Information

I39 S. 30 in force at 28.9.2009 by 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)

31 Parental etc. consent

(1) An adoption order may not be made unless one of the five conditions is met.

(2) The first condition is that, in the case of each parent or guardian of the child, the appropriate court is satisfied—

(a) that the parent or guardian understands what the effect of making an adoption order would be and consents to the making of the order (whether or not the parent or guardian knows the identity of the persons applying for the order), or

(b) that the parent's or guardian's consent to the making of the adoption order should be dispensed with on one of the grounds mentioned in subsection (3).

(3) Those grounds are—

(a) that the parent or guardian is dead,

(b) that the parent or guardian cannot be found or is incapable of giving consent,

(c) that subsection (4) or (5) applies,

(d) that, where neither of those subsections applies, the welfare of the child otherwise requires the consent to be dispensed with.

(4) This subsection applies if the parent or guardian—

(a) has parental responsibilities or parental rights in relation to the child other than those mentioned in sections 1(1)(c) and 2(1)(c) of the 1995 Act,

(b) is, in the opinion of the court, unable satisfactorily to—

(i) discharge those responsibilities, or

(ii) exercise those rights, and

(c) is likely to continue to be unable to do so.

(5) This subsection applies if—

(a) the parent or guardian has, by virtue of the making of a relevant order, no parental responsibilities or parental rights in relation to the child, and

(b) it is unlikely that such responsibilities will be imposed on, or such rights given to, the parent or guardian.

Status: *Point in time view as at 01/10/2009.*
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(6) In subsection (5)(a), "relevant order" means a permanence order which does not include provision granting authority for the child to whom the order relates to be adopted.

(7) The second condition is that a permanence order granting authority for the child to be adopted is in force.

(8) The third condition is that each parent or guardian of the child has consented under section 20 of the 2002 Act (advance consent to adoption), has not withdrawn the consent and does not oppose the making of the adoption order.

(9) The fourth condition is that—

(a) the child has been placed for adoption by an adoption agency (within the meaning of section 2(1) of the 2002 Act) with the prospective adopters in whose favour the adoption order is proposed to be made,

(b) the child was placed for adoption—

(i) under section 19 of the 2002 Act (placing children with parental consent) with the consent of each parent or guardian and the consent of the mother was given when the child was at least 6 weeks old, or

(ii) under an order made under section 21 of the 2002 Act (placement orders) and the child was at least 6 weeks old when the order was made, and

(c) no parent or guardian of the child opposes the making of the adoption order.

(10) The fifth condition is that an order under Article 17(1) or 18(1) of the Northern Ireland Order (orders declaring children free for adoption) is in force in relation to the child.

(11) Consent is ineffective for the purposes of subsection (2)(a) if given by the mother less than 6 weeks after the child's birth.

(12) A parent or guardian may not oppose the making of an adoption order under subsection (8) or (9) without leave of the court.

(13) The court must not give leave under subsection (12) unless satisfied that there has been a change of circumstances since the consent of the parent or guardian was given or, as the case may be, the order under section 21 of the 2002 Act was made.

(14) The withdrawal of—

(a) any consent to the placement of a child for adoption under section 19, or under an order under section 21, of the 2002 Act, or

(b) any consent given under section 20 of that Act,

is ineffective if the consent is given after an application for an adoption order is made.

(15) In subsections (2) and (3), "parent", in relation to the child to be adopted, means—

(a) a parent who has any parental responsibilities or parental rights in relation to the child, or

(b) a parent who, by virtue of a permanence order which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Commencement Information

I40 S. 31 in force at 28.9.2009 by 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)

32 Consent of child aged 12 or over

(1) Except where subsection (2) applies, an adoption order may not be made in respect of a child who is aged 12 or over unless the child consents.

(2) This subsection applies where the court is satisfied that the child is incapable of consenting to the order.

Commencement Information

I41 S. 32 in force at 28.9.2009 by 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)

33 Restrictions on making orders

(1) Except where subsection (2) applies, the court may not hear an application for an adoption order in relation to a child where a previous application falling within subsection (3) made in relation to the child by the same persons was refused by any court.

(2) This subsection applies where—

(a) in refusing the previous application, the court directed that this section 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 hear the application.

(3) An application falls within this subsection if it is an application for—

(a) an adoption order,

(b) an adoption order as defined in section 46(1) of the 2002 Act,

(c) an order made, or having effect as if made, under Article 12 of the Northern Ireland Order,

(d) an order for adoption made in the Isle of Man,

(e) an order for adoption made in any of the Channel Islands.

Commencement Information

I42 S. 33 in force at 28.9.2009 by 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)

34 Contravention of section 72 no bar to making order

The court may make an adoption order in relation to a child even where it is found that the applicants have, as respects the child, contravened section 72.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Modifications etc. (not altering text)

C17 S. 34 excluded (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(4)(g)**

Commencement Information

I43 S. 34 in force at 28.9.2009 by 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)

Effect of order on existing rights etc.

35 Effect of order on existing rights etc.

(1) Where an adoption order is made on the application of a member of a relevant couple by virtue of subsection (3) of section 30, the making of the order—

(a) does not affect any parental responsibilities and parental rights which immediately before the making of the order were vested in the other member of the relevant couple,

(b) does not extinguish any duty owed to the child by that other member—

(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 responsibilities and parental rights in respect of such a period.

(2) Otherwise, the making of an adoption order—

(a) extinguishes any parental responsibilities and parental rights relating to the child which immediately before the making of the order were vested in any person,

(b) subject to subsection (3), extinguishes any duty owed to the child immediately before the making of the order—

(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 responsibilities and parental rights in respect of such a period.

(3) The making of an adoption order does not extinguish a duty arising under a deed or agreement—

(a) which constitutes a trust, or

(b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.

(4) An adoption order does not affect parental responsibilities and parental rights so far as they relate to any period before the making of the order.

Commencement Information

I44 S. 35 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Revocation of supervision requirement

36 Revocation of supervision requirement

(1) Subsection (2) applies where—

(a) the child to be adopted is subject to a supervision requirement, and

(b) the appropriate court is satisfied that, were it to make an adoption order in relation to the child, compulsory measures of supervision in respect of the child would no longer be necessary.

(2) The court must make an order providing that, on the making of the adoption order, the supervision requirement ceases to have effect.

Commencement Information

I45 S. 36 in force at 28.9.2009 by 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)

Adoption records

37 Information to be kept about adoptions

The Scottish Ministers may make regulations for or in connection with specifying—

(a) the information which an adoption agency must keep in relation to adoptions, and

(b) the form and manner in which it must keep the information.

Commencement Information

I46 S. 37 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I47 S. 37 in force at 28.9.2009 in so far as not already in force by 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 Disclosure of information kept under relevant enactment

(1) The Scottish Ministers may by regulations make provision for or in connection with the disclosure by adoption agencies to adopted persons and other persons of a description or descriptions specified in the regulations of information kept by virtue of a relevant enactment.

(2) Regulations under subsection (1) may in particular include provision—

(a) in circumstances specified in the regulations, conferring discretion on adoption agencies as to whether to disclose or withhold information,

(b) specifying conditions which are to apply in relation to the disclosure of information, or information of a type so specified, to adopted persons of a description or descriptions so specified,

(c) specifying circumstances in which information should not be disclosed to adopted persons of a description or descriptions so specified,

(d) about the review of decisions of adoption agencies in connection with—

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(i) the disclosure of information,
(ii) the conditions applicable to such disclosure.

(3) In this section, "relevant enactment" means—
(a) section 37, or
(b) any other enactment (whether or not in force) which imposes a requirement (however expressed) to keep records relating to adoptions.

Commencement Information
I48 S. 38 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**
I49 S. 38 in force at 28.9.2009 in so far as not already in force by 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)

CHAPTER 3

STATUS OF ADOPTED CHILDREN

39 Meaning of "adoption" in Chapter 3

(1) In this Chapter, "adoption" means—
(a) adoption by an adoption order,
(b) adoption by an adoption order as defined in section 46(1) of the 2002 Act,
(c) adoption by an order made, or having effect as if made, under Article 12 of the Northern Ireland Order,
(d) adoption by an order made in the Isle of Man or any of the Channel Islands,
(e) a Convention adoption,
(f) an overseas adoption, or
(g) an adoption recognised by the law of Scotland and effected under the law of any other country;

and related expressions are to be interpreted accordingly.

(2) References in this Chapter to adoption do not include an adoption effected before the day on which this Chapter comes into force.

(3) Any reference in an enactment to an adopted person within the meaning of this Chapter includes a reference to an adopted child within the meaning of Part IV of the Adoption (Scotland) Act 1978 (c. 28).

Commencement Information
I50 S. 39 in force at 28.9.2009 by 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)

40 Status conferred by adoption

(1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(2) If an adopted person is adopted—
  (a) by a relevant couple, or
  (b) by virtue of section 30(3), by a member of a relevant couple,

the adopted person is to be treated as the child of the couple concerned.

(3) An adopted person adopted by virtue of section 30(3) by a member of a relevant couple is to be treated in law as not being the child of any person other than the adopter and the other member of the couple.

(4) Otherwise, an adopted person is to be treated in law as not being the child of any person other than the adopters or adopter.

(5) Subsections (3) and (4) do not affect any reference in this Act to a person's natural parent or to any other natural relationship.

(6) Subsection (7) applies where, in the case of a person adopted under a Convention adoption, the Court of Session is satisfied, on an application under this section—
  (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption,
  (b) that—
    (i) the consents mentioned in Article 4(c) and (d) of the Convention have not been given for a full adoption, or
    (ii) 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 person for a direction to be given under that subsection.

(7) The court may direct that subsection (4)—
  (a) is not to apply, or
  (b) is not to apply to such extent as may be specified in the direction.

(8) In subsection (6), "full adoption" means an adoption by virtue of which the person falls to be treated in law as if the person were not the child of any person other than the adopters or adopter.

(9) This section has effect from the date of the adoption.

(10) Subject to the provisions of this Chapter, this section—
  (a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption and so applies subject to any contrary indication, and
  (b) has effect as respects things done, or events occurring, on or after the adoption.

Commencement Information

I51 S. 40 in force at 28.9.2009 by 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)

41 Miscellaneous enactments

(1) Subject to subsection (2), section 40 does not apply—

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(a) for the purposes of determining the forbidden degrees of consanguinity and affinity in respect of the law relating to marriage or to the eligibility of persons to register as civil partners of each other, or

(b) in respect of the crime of incest.

(2) On the making of an adoption order, the adopter and the person adopted are deemed, for all time coming, to be within the forbidden degrees in respect of the law relating to marriage, to such eligibility and to incest.

(3) Section 40 does not apply for the purposes of any provision of—

(a) the British Nationality Act 1981 (c. 61),

(b) the Immigration Act 1971 (c. 77),

(c) any instrument having effect under either of those Acts, or

(d) any other law for the time being in force which determines British citizenship, British overseas territories citizenship or British Overseas Citizenship.

Commencement Information

I52 S. 41 in force at 28.9.2009 by 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)

42 Pensions

Section 40 does not affect entitlement to a pension which is payable to or for the benefit of a person and is in payment at the time of the person's adoption.

Commencement Information

I53 S. 42 in force at 28.9.2009 by 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)

43 Insurance

(1) Subsections (2) and (3) apply where a child is adopted whose natural parent has effected an insurance with—

(a) a friendly society,

(b) a collecting society, or

(c) an industrial insurance company,

for the payment on the death of the child of money for funeral expenses.

(2) The rights and liabilities under the policy are by virtue of the adoption transferred to the adoptive parents.

(3) For the purposes of the enactments relating to such societies and companies, the adoptive parents are to be treated as the person who took out the policy.

(4) Where the adoption is effected by an order made by virtue of section 30(3), the references in subsections (2) and (3) to the adoptive parents are to be read as references to the adopter and the other member of the relevant couple.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Commencement Information

I54 S. 43 in force at 28.9.2009 by 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)

44 Succession and inter vivos deeds

Section 40 does not affect the law relating to adopted persons in respect of—

(a) succession to an intestate or testate estate, and

(b) the disposal of property by virtue of an *inter vivos* deed.

Commencement Information

I55 S. 44 in force at 28.9.2009 by 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)

CHAPTER 4

ADOPTION SUPPORT PLANS

Adoption support plans

45 Adoption support plans

(1) This section applies where—

(a) a local authority has, by virtue of section 9(1), assessed the needs of a person for adoption support services and decides that the provision of such services is called for in respect of the person, and

(b) the person is a member of a relevant family.

(2) Subject to subsection (4), the authority must prepare an adoption support plan in respect of each member of the relevant family.

(3) An adoption support plan must, in relation to the person it concerns ("the person")—

(a) specify the needs of the person identified as a result of an assessment carried out by virtue of section 9(1),

(b) record details of the adoption support services the provision of which the authority decides is called for by virtue of section 9(2),

(c) specify any other needs of the person identified by the authority,

(d) set out how the needs mentioned in paragraphs (a) and (c) may be met by the provision of adoption support services,

(e) record details of any previous assessment of needs in respect of the person carried out by virtue of section 9(1),

(f) record details of any assessment of needs in respect of the person made under section 12A(1) of the Social Work (Scotland) Act 1968 (c. 49),

(g) where the person has been adopted, record details of any care plan prepared by a local authority in respect of the person under regulations made under section 17 of the 1995 Act,

Status: *Point in time view as at 01/10/2009.*
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(h) record details of any adoption support services which—
  (i) were provided to the person before the plan was prepared, or
  (ii) are being provided to the person when the plan is prepared,

(i) specify any other matter which, in the opinion of the local authority preparing the plan, is relevant to the provision of adoption support services to the person, and

(j) where there is no information to be included in the plan under any of paragraphs (a) to (i), record that fact.

(4) The authority may, with the consent of each member of the relevant family aged 12 or over, prepare a single adoption support plan in respect of all members of the relevant family instead of preparing adoption support plans in respect of each of them.

(5) Subsection (3) applies to a single adoption support plan prepared under subsection (4) as if—

(a) for the words "the person it concerns ("the person")" there were substituted " each member of the relevant family it concerns ",

(b) for the words "the person" in paragraphs (a), (c), (e), (f), (h) and (i) there were substituted " each member ",

(c) for the words "the person" in paragraph (g), where they first occur, there were substituted " a member of the relevant family ", and

(d) for the words "the person" in that paragraph, where they second occur, there were substituted " that member ".

(6) If in the opinion of the authority a member of the relevant family aged 12 or over is incapable of giving consent under subsection (4), the requirement to obtain such consent does not apply in relation to the member.

(7) In this section, "relevant family" means—

(a) a child who is placed for adoption,

(b) the person or persons with whom a child is placed for adoption,

(c) a child who has been adopted,

(d) the person who has, or persons who have, adopted that child,

(e) any—
  (i) child of a person or persons mentioned in paragraph (b) or (d),
  (ii) other child who has been treated by the person or persons as a child of the person or persons,

living in the same household as the person or persons.

Commencement Information

I56 S. 45 in force at 28.9.2009 by 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)

46 Duration

(1) An adoption support plan ceases to have effect on the occurrence of whichever of the events in subsection (2) first occurs.

(2) Those events are—

Status: *Point in time view as at 01/10/2009.*
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(a) the preparation of a further adoption support plan in respect of the member or, as the case may be, members of the relevant family in relation to whom the adoption support plan was prepared,

(b) the date on which an appropriate child reaches the age of 18.

(3) In this section, "appropriate child" means a child—

(a) who has been placed for adoption, or

(b) who has been adopted,

and who is a member of the relevant family in relation to which, or to any members of which, the adoption support plan was prepared.

Commencement Information

I57 S. 46 in force at 28.9.2009 by 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)

47 Family member's right to require review of plan

(1) This section applies where an adoption support plan is in force in respect of a member of a relevant family or, as the case may be, a relevant family.

(2) Subject to subsection (4), the person to whom the plan relates or, as the case may be, a member of the relevant family to which the plan relates (in either case, the "relevant member") may, if the relevant member believes the local authority is not complying with any of its obligations mentioned in the plan, require the authority to review the plan.

(3) The authority may, in reviewing the plan, carry out a reassessment of the needs of the relevant member for adoption support services.

(4) A relevant member (other than the person or persons with whom the child has been placed for adoption or the person who has, or persons who have, adopted the child) may not make a requirement under subsection (2) unless, in the opinion of the local authority, the member is capable of understanding the need for adoption support services.

(5) After reviewing the plan, the local authority must vary the plan to reflect any changes in—

(a) the needs of any relevant member for adoption support services identified as a result of a reassessment of needs made under subsection (3),

(b) the adoption support services the local authority will provide.

(6) In this section, any references to a reassessment of needs of a person include, where no assessment has been carried out by virtue of section 9(1)(a) in relation to the person, references to an assessment of needs of the person.

Commencement Information

I58 S. 47 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

48 Other cases where authority under duty to review plan

(1) This section applies where an adoption support plan is in force.

(2) The local authority must review the plan—
- (a) from time to time, and
- (b) at any time when the authority becomes aware of a change in the circumstances of a relevant member.

(3) In reviewing the plan, the authority may make a reassessment of the needs of any relevant member.

(4) After reviewing the plan, the authority must vary the plan to reflect any changes in—
- (a) the needs of any relevant member for adoption support services identified as a result of a reassessment of needs made under subsection (3),
- (b) the adoption support services the local authority will provide.

(5) In this section—
- (a) any references to a reassessment of needs of a person are to be construed in accordance with subsection (6) of section 47,
- (b) "relevant member" has the same meaning as in that section.

Commencement Information

I59 S. 48 in force at 28.9.2009 by 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)

Reassessment

49 Reassessment of needs for adoption support services

(1) This section applies where an adoption support plan is in force.

(2) Any relevant member aged 12 or over may require the local authority which prepared the plan to make a reassessment of the member's needs for adoption support services.

(3) The authority, having regard to the results of that reassessment, must decide whether the needs of the member call for the provision of such services.

(4) Where the authority decides, by virtue of subsection (3), that the provision of adoption support services is called for, the authority must provide the services.

(5) Where the authority provides adoption support services under subsection (4), it must vary the adoption support plan to reflect any changes in the services the authority will provide.

(6) A relevant member (other than the person or persons with whom the child has been placed for adoption or the person who has, or persons who have, adopted the child) may not require a reassessment to be made under subsection (2) unless, in the opinion of the local authority, the member is capable of understanding the need for adoption support services.

(7) Where a local authority is making a reassessment of needs under this section, it must—

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and

(b) have regard to such matters as may be so prescribed.

(8) In this section—

(a) any references to a reassessment of needs of a person are to be construed in accordance with subsection (6) of section 47,

(b) "relevant member" has the same meaning as in that section.

Commencement Information

I60 S. 49(1)-(6)(8) in force at 28.9.2009 by 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)

I61 S. 49(7) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I62 S. 49(7) in force at 28.9.2009 in so far as not already in force by 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)

Directions

50 Implementation of plans: directions

(1) The Scottish Ministers may give directions of a general or specific nature to a local authority as to the implementation of adoption support plans.

(2) A direction under subsection (1) may not require an authority—

(a) to provide or, as the case may be, continue to provide, or

(b) withhold provision of,

a particular adoption support service.

(3) The Scottish Ministers may vary or revoke any direction under subsection (1).

Commencement Information

I63 S. 50 in force at 28.9.2009 by 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)

Guidance

51 Guidance

(1) In preparing or reviewing adoption support plans, a local authority must have regard to any guidance issued by the Scottish Ministers.

(2) The Scottish Ministers may vary or revoke any such guidance.

Commencement Information

I64 S. 51 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Regulations

52 Regulations about reviews of adoption support plans

The Scottish Ministers may by regulations make provision for or in connection with specifying the way in which reviews of adoption support plans are to be carried out.

Commencement Information

I65 S. 52 in force at 28.9.2009 by 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)

CHAPTER 5

REGISTRATION

53 Adopted Children Register and index

(1) The Registrar General must continue to maintain—
  (a) a register to be called the Adopted Children Register, and
  (b) an index of the Adopted Children Register.

(2) No entries may be made in the Adopted Children Register other than entries—
  (a) directed to be made in it by adoption orders, or
  (b) required to be made under schedule 1.

(3) The provisions of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49) with regard to the correction of errors in entries apply in relation to entries in the Adopted Children Register as they apply in relation to entries in any register of births.

(4) Schedule 1 (which makes provision about registration of adoptions and the amendment of adoption orders) has effect.

Modifications etc. (not altering text)

C18 Ss. 53-55 applied in part (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(5)**

Commencement Information

I66 S. 53(1)-(3) in force at 28.9.2009 by 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)

I67 S. 53(4) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I68 S. 53(4) in force at 28.9.2009 in so far as not already in force by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

54 Searches and extracts

(1) The terms, conditions and regulations as to payment of fees, form and authentication of documents and otherwise applicable under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49) in respect of—

(a) searches in indexes kept by virtue of that Act by the Registrar General, and

(b) the supply from the General Register Office of extracts of entries in the registers of births, deaths and marriages,

apply in respect of searches in the index of the Adopted Children Register and supplies of extracts of entries in the Adopted Children Register.

(2) Where a person makes a request in accordance with those terms, conditions and regulations (including paying such fee as may be prescribed by those regulations), the Registrar General is, if the General Register Office is open for the purpose, to—

(a) search (or permit the person to search) the index of the Adopted Children Register, and

(b) issue to the person an extract of an entry in the register.

Modifications etc. (not altering text)

C18 Ss. 53-55 applied in part (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(5)**

Commencement Information

I69 S. 54 in force at 28.9.2009 by 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)

55 Connections between the register and birth records

(1) The Registrar General must make traceable the connection between any entry in the register of births which, by virtue of paragraph 2(2) of schedule 1 or any enactment at the time in force, has been marked "Adopted" and any corresponding entry in the Adopted Children Register.

(2) Information kept by the Registrar General for the purposes of subsection (1) is not to be open to public inspection or search.

(3) The Registrar General may disclose any such information only in accordance with subsection (4).

(4) Information is disclosed in accordance with this subsection if disclosed—

(a) under an order of the Court of Session or a sheriff,

(b) to an adopted person who is aged 16 or over and to whom the information relates, or

(c) to a local authority, Board, registered adoption society or relevant adoption society which is providing counselling for any such adopted person.

(5) Where the Registrar General discloses information in accordance with subsection (4)(b), the Registrar must inform the adopted person that counselling services are available for the person—

(a) if the person is in Scotland, from any local authority in Scotland,

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(b) if the person is in England and Wales, from any local authority in England and Wales,

(c) if the person is in Northern Ireland, from any Board,

(d) if the person is in the United Kingdom and the person's adoption was arranged by—

(i) a registered adoption service, from that service,

(ii) a registered adoption society, from that society, or

(iii) a relevant adoption society, from that society.

(6) Where—

(a) in accordance with subsection (4) information is disclosed to an adopted person who is in Scotland, or

(b) such a person applies for information under—

(i) Schedule 2 to the 2002 Act, or

(ii) Article 54 of the Northern Ireland Order,

any body mentioned in subsection (7) from which the adopted person requests counselling must provide counselling for the person.

(7) Those bodies are—

(a) any local authority in Scotland,

(b) any registered adoption service, or

(c) any registered adoption society or relevant adoption society in so far as (by virtue of section 76(2)) that society is acting as an adoption society in Scotland.

(8) In this section—

"Board" means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265),

"local authority", in relation to England and Wales, means—

(a) any unitary authority, or

(b) any county council so far as it is not a unitary authority,

"relevant adoption society" means an adoption society registered under Article 4 of the Northern Ireland Order.

Modifications etc. (not altering text)

C18 Ss. 53-55 applied in part (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(5)**

Commencement Information

I70 S. 55 in force at 28.9.2009 by 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)

56 Admissibility of extracts as evidence

(1) An extract of an entry in the Adopted Children Register issued by virtue of section 54(2)(b) is sufficient evidence of the adoption to which it relates.

(2) Where an entry in the Adopted Children Register contains a record of—

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(a) the date of birth, or
(b) the country of the birth,

of the adopted person, an extract of the entry issued by virtue of that section is sufficient evidence of that date or, as the case may be, country.

Commencement Information

I71 S. 56 in force at 28.9.2009 by 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)

57 Interpretation of Chapter 5

(1) In this Chapter, "Registrar General" means the Registrar General of Births, Deaths and Marriages for Scotland.

(2) Any register, index or record maintained by virtue of section 53 or 55 or schedule 1 may be maintained in any form that the Registrar General considers appropriate.

(3) References (however expressed) to entries in such a register, or to their amendment, cancellation or marking, are to be read accordingly.

Commencement Information

I72 S. 57 in force at 28.9.2009 by 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)

CHAPTER 6

ADOPTIONS WITH A FOREIGN ELEMENT

Restrictions on movement of children

58 Restriction on bringing children into the United Kingdom

(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 outwith 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 12 months ending with that time.

(2) In subsection (1), the references to adoption, or a child adopted, by the British resident include a reference to adoption, or a child adopted, by the British resident and another person.

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

Status: *Point in time view as at 01/10/2009.*
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(4) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outwith the British Islands, whether or not the adoption is—
  (a) an adoption within the meaning of Chapter 3, or
  (b) a full adoption (as defined in section 40(8)).

(5) 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 in the prescribed manner for an assessment of the person's suitability to adopt the child, and
  (b) to give the agency any information it may require for the purpose of the assessment.

(6) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.

(7) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may provide for any provision of Chapter 2 to apply with modifications or not to apply.

(8) Regulations may provide for this section not to apply if—
  (a) the adopters or, as the case may be, prospective adopters of the child in question are—
    (i) natural parents,
    (ii) natural relatives, or
    (iii) guardians,
    of the child (or one of them is), or
  (b) the British resident in question is a step-parent of the child,
  and any prescribed conditions are met.

(9) On the occasion of the first exercise of the power to make regulations under subsection (8)—
  (a) the regulations must not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and
  (b) accordingly section 117(4) does not apply to the statutory instrument containing the regulations.

(10) In this section, "prescribed" means prescribed by regulations and "regulations" means regulations made by the Scottish Ministers.

Commencement Information

I73 S. 58(1)-(4) (8) (9) in force at 28.9.2009 by 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)

I74 S. 58(5)-(7) (10) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I75 S. 58(5)-(7) (10) in force at 28.9.2009 in so far as not already in force by 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)

Status: *Point in time view as at 01/10/2009.*
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59 Preliminary order where child to be adopted abroad

(1) The appropriate court may, on an application by persons ("the prospective adopters") who the court is satisfied intend to adopt a child under the law of a country or territory outwith the British Islands, make an order vesting parental responsibilities and parental rights in relation to the child in the prospective adopters.

(2) If the court is satisfied that the prospective adopters would meet the requirements as to domicile, or habitual residence, in Scotland which they would require to meet if an adoption order were to be made on their application, the court may not make an order under this section.

(3) An order under this section may not be made unless any requirements prescribed by regulations by the Scottish Ministers are satisfied.

(4) An application for an order under this section may not be made unless at all times during the period of 10 weeks immediately preceding the application the child's home was with the prospective adopters.

(5) Section 35 has effect in relation to an order under this section as it has effect in relation to adoption orders.

(6) The Scottish Ministers may by regulations provide for any provision of this Act which relates to adoption orders to apply, with or without modifications, to orders under this section.

Commencement Information

I76 S. 59(1)(2)(4)(5) in force at 28.9.2009 by 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)

I77 S. 59(3)(6) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I78 S. 59(3)(6) in force at 28.9.2009 in so far as not already in force by 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)

60 Restriction on removal of children for adoption outwith Great Britain

(1) A person who takes or sends a protected child out of Great Britain to any place outwith the British Islands with a view to the adoption of the child by any person commits an offence.

(2) A person who makes or takes part in any arrangements for transferring the care of a protected child to another person, knowing that the other person intends to take or send the child out of Great Britain in circumstances which would constitute an offence under subsection (1), commits an offence.

(3) No offence is committed under subsection (1) if the child is taken or sent out of Great Britain under the authority of an order under—

(a) section 59,

(b) section 84 of the 2002 Act, or

(c) Article 57 of the Northern Ireland Order.

(4) A person is deemed to take part in arrangements for transferring the care of a child to another person for the purpose mentioned in subsection (2) if the person—

(a) facilitates the placing of the child in the care of the other person,

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(b) initiates or takes part in negotiations the purpose or effect of which is—
(i) the making of such arrangements, or
(ii) the conclusion of an agreement to transfer the care of the child,
for the purpose mentioned in that subsection, or
(c) causes any person to initiate or take part in any such negotiations.

(5) The Scottish Ministers may by regulations provide for subsections (1) to (3) to apply with modifications, or not to apply, if—
(a) the prospective adopters are—
(i) parents,
(ii) relatives, or
(iii) guardians,
of the child (or one of them is), or
(b) the prospective adopter is a step-parent of the child,
and any conditions prescribed by the regulations are met.

(6) On the occasion of the first exercise of the power to make regulations under subsection (5)—
(a) the regulations must not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and
(b) accordingly section 117(4) does not apply to the statutory instrument containing the regulations.

(7) In any proceedings under this section—
(a) a report by a British consular officer or a deposition made before, and authenticated under the signature of, such an officer is (if proved that the officer or deponent cannot be found in the United Kingdom) sufficient evidence of the matters stated in the report or deposition, and
(b) it is not necessary to prove the signature or official character of the person who bears to have signed the report or deposition.

(8) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

(9) In subsections (1) and (2), "protected child" means a child who is—
(a) habitually resident in the United Kingdom, or
(b) a Commonwealth citizen.

Commencement Information
I79 S. 60 in force at 28.9.2009 by 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)

61 Regulations under section 58: offences

(1) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where section 58 applies, the person commits an offence—
(a) if the person has not complied with any requirement imposed by virtue of subsection (5) of that section, or

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(b) if the person has not met any condition which the person is required to meet by virtue of subsection (6) of that section,

before that time, or before any later time which may be prescribed by regulations made by the Scottish Ministers.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both,

(b) on conviction on indictment to imprisonment for a term not exceeding 12 months, or a fine or both.

Commencement Information

I80 S. 61(1) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I81 S. 61(1) in force at 28.9.2009 in so far as not already in force by 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)

I82 S. 61(2) in force at 28.9.2009 by 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)

Adoptions from abroad: special restrictions

62 Declaration of special restrictions on adoptions from abroad

(1) This section applies if the Scottish Ministers have reason to believe that, because of practices taking place in a country or territory outwith the British Islands (the "relevant country") in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom in the cases mentioned in subsection (2).

(2) Those cases are—

(a) that a British resident wishes to bring, or cause another to bring, a child who is not a British resident into the United Kingdom for the purpose of adoption by the British resident and, in connection with the proposed adoption, there have been, or would have to be, proceedings in the relevant country or dealings with authorities or agencies there, or

(b) that a British resident wishes to bring, or cause another to bring, into the United Kingdom a child adopted by the British resident under an adoption effected, within the period of 12 months ending with the date of the bringing in, under the law of the relevant country.

(3) The Scottish Ministers may by order declare, in relation to any relevant country, that special restrictions are to apply for the time being in relation to the bringing in of children in the cases mentioned in subsection (2).

(4) The Scottish Ministers must, as respects each relevant country in relation to which such a declaration has effect for the time being (a "restricted country"), publish reasons for making the declaration in relation to the country.

(5) The Scottish Ministers must publish a list of restricted countries ("the restricted list") and keep the list up to date.

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(6) The reasons and the restricted list are to be published in whatever way the Scottish Ministers think appropriate for bringing them to the attention of adoption agencies and members of the public.

(7) In this section, "British resident" means a person habitually resident in the British Islands.

(8) Any reference in this section to adoption by a British resident includes adoption by a British resident and another person.

Commencement Information
I83 S. 62 in force at 1.9.2008 by S.S.I. 2008/282, **art. 2**

63 Review

(1) The Scottish Ministers must keep under review, in relation to each restricted country, whether it should continue to be a restricted country.

(2) If the Scottish Ministers determine, in relation to a restricted country, that there is no longer a reason to believe what is mentioned in subsection (1) of section 62, they must by order revoke the order containing the declaration made in relation to it under subsection (3) of that section.

(3) In this section, "restricted country" has the same meaning as in section 62.

Commencement Information
I84 S. 63 in force at 1.9.2008 by S.S.I. 2008/282, **art. 2**

64 The special restrictions

(1) The special restrictions mentioned in subsection (3) of section 62 are that the Scottish Ministers are not to take any step which they might otherwise have taken in connection with furthering the bringing of a child into the United Kingdom in the cases mentioned in subsection (2) of that section (whether or not that step is provided for by virtue of any enactment).

(2) Nothing in subsection (1) prevents the Scottish Ministers from taking those steps if, in any particular case, the prospective adopters or, as the case may be, the adopters satisfy the Scottish Ministers that they should take those steps despite the special restrictions.

(3) The Scottish Ministers may make regulations providing for—
   (a) the procedure to be followed by them in determining whether or not they are satisfied as mentioned in subsection (2),
   (b) matters which they are to take into account when making such a determination (whether or not they also take other matters into account).

Commencement Information
I85 S. 64 in force at 1.9.2008 by S.S.I. 2008/282, **art. 2**

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

65 Imposition of extra conditions in certain cases

(1) The Scottish Ministers may make regulations providing—

(a) for them to specify in the restricted list, in relation to any restricted country, a step which is not otherwise provided for by virtue of any enactment but which, by virtue of the arrangements between the United Kingdom and that country, the Scottish Ministers normally take in connection with the bringing in of a child where that country is concerned, and

(b) that, if such a step has been so specified in relation to a restricted country, one or more conditions specified in the regulations are to be met in respect of a child brought into the United Kingdom in either of the cases mentioned in section 62(2) (reading the reference there to the "relevant country" as being to the restricted country in question).

(2) Those conditions are in addition to any provided for by virtue of—

(a) section 58, or

(b) any other enactment.

(3) A person who brings, or causes another to bring, a child into the United Kingdom commits an offence if the person has not met any condition which the person is required to meet by virtue of subsection (1)(b).

(4) Subsection (3) does not apply if the step specified in the restricted list in relation to any country had already been taken before the publication of the restricted list.

(5) A person who commits an offence under subsection (3) is liable—

(a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both,

(b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine or both.

(6) In this section, "restricted country" and "restricted list" have the same meanings as in section 62.

Commencement Information

I86 S. 65 in force at 1.9.2008 by S.S.I. 2008/282, **art. 2**

Charging

66 Power to charge

(1) This section applies to adoptions to which—

(a) section 58 applies, or

(b) regulations made under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c. 18) apply.

(2) The Scottish Ministers may charge a fee to adopters for services provided or to be provided by them in relation to adoptions to which this section applies.

(3) The Scottish Ministers may determine the level of fee as they see fit and may, in particular—

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(a) charge a flat fee or charge different fees in different cases or descriptions of case,

(b) in any case or description of case, waive a fee.

(4) The Scottish Ministers must secure that, taking one financial year with another, the income from fees under this section does not exceed the total cost to them of providing the services in relation to which the fees are imposed.

(5) In this section, "financial year" means a period of 12 months ending with 31 March.

(6) Any references in this section—

(a) to adoptions include prospective adoptions, and

(b) to adopters include prospective adopters.

Commencement Information

I87 S. 66 in force at 28.9.2009 by 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)

Overseas adoptions etc.

67 Meaning of "overseas adoption"

(1) In this Act, "overseas adoption"—

(a) means an adoption of a description specified in regulations made by the Scottish Ministers (being a description of adoptions effected under the law of any country or territory outwith the British Islands), but

(b) does not include a Convention adoption.

(2) The Scottish Ministers may by regulations prescribe the requirements that ought to be met by an adoption of any description effected after the coming into force of the regulations for it to be an overseas adoption for the purposes of this Act.

(3) At any time when regulations under subsection (2) are in force, the Scottish Ministers must exercise their power under subsection (1) so as to secure that adoptions of any description effected after the coming into force of the regulations are not overseas adoptions for the purposes of this Act if they consider that such adoptions are not likely, within a reasonable time, to meet the requirements prescribed under subsection (2).

(4) Regulations under subsection (1) may contain provision as to the manner in which evidence of any overseas adoption may be given.

(5) In this section, "adoption" means the adoption of a child or of a person who was a child at the time the adoption was applied for.

Commencement Information

I88 S. 67 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
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68 Annulment and recognition

(1) The Court of Session may, on an application under this subsection, by order annul a Convention adoption or a Convention adoption order on the ground that the adoption or, as the case may be, order is contrary to public policy.

(2) The Court of Session may, on an application under this subsection—

(a) order that an overseas adoption or a determination is to cease to be valid in Great Britain on the ground that the adoption or, as the case may be, 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,

(b) decide the extent, if any, to which a determination has been affected by a subsequent determination.

(3) The Court of Session may, in any proceedings in that court, decide that an overseas adoption or a determination is, for the purposes of those proceedings, to be treated as invalid in Great Britain on either of the grounds mentioned in subsection (2)(a).

(4) An order or decision of the High Court on an application under section 89(2) of the 2002 Act is to be recognised and to have effect as if it were an order or decision of the Court of Session on an application under subsection (2).

(5) Except as provided by this section, the validity of a Convention adoption, a Convention adoption order, an overseas adoption or a determination is not to be questioned in proceedings in any court in Scotland.

(6) In this section "determination" means such a determination as is mentioned in section 70.

Commencement Information

I89 S. 68 in force at 28.9.2009 by 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)

69 Section 68: supplementary provision

(1) Any application for—

(a) an order under section 68, or

(b) a decision under subsection (2)(b) of that section,

is to be made in the manner prescribed in regulations made by the Scottish Ministers and within such period as may be so prescribed.

(2) No application is to be made under section 68(1) in respect of an adoption unless immediately before the application is made—

(a) the person adopted was habitually resident in Scotland, or

(b) the persons on whose application the adoption order was made were habitually resident there.

(3) In deciding in pursuance of section 68 whether such an authority as is mentioned in section 70 was competent to hear a particular case, a court is to be 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 hear the case.

Status: *Point in time view as at 01/10/2009.*
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Commencement Information

I90 S. 69(1) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I91 S. 69(1) in force at 28.9.2009 in so far as not already in force by 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)

I92 S. 69(2)(3) in force at 28.9.2009 by 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)

70 Effect of determinations and orders made outwith Scotland

(1) Subsection (2) applies where—

(a) an authority of a Convention country (other than the United Kingdom) having power under the law of that country—

(i) to authorise, or review the authorisation of, a Convention adoption, or

(ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order, or

(b) an authority of a relevant territory having power under the law of that territory—

(i) to authorise, or review the authorisation of, a Convention adoption or an adoption effected in that territory, or

(ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order,

makes a determination ("the relevant determination") in the exercise of that power.

(2) Subject to section 68 and any subsequent determination having effect under this subsection, the relevant determination has effect in Scotland for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination as the case may be.

(3) In subsection (1), "relevant territory" means—

(a) any of the Channel Islands,

(b) the Isle of Man, or

(c) any British overseas territory (within the meaning of the British Nationality Act 1981 (c. 61)).

(4) Section 35 applies in relation to an order under Article 17 (freeing child for adoption with parental agreement) or 18 (freeing child for adoption without parental agreement) of the Northern Ireland Order as if it were an adoption order.

(5) Sections 35(2) and (3) and 43 apply in relation to a child who is the subject of an order which—

(a) is similar to an order under section 59, and

(b) is made (whether before or after this Act has effect) in a part of the British Islands,

as those sections apply in relation to a child who is the subject of an adoption order.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Commencement Information

I93 S. 70 in force at 28.9.2009 by 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)

CHAPTER 7

MISCELLANEOUS

Adoption allowances

71 Adoption allowances schemes

(1) Subject to subsection (3), an adoption agency which is—

(a) a local authority must, within such period after the coming into force of this section as the Scottish Ministers may by order direct, prepare an adoption allowances scheme,

(b) a registered adoption service may prepare such a scheme.

(2) An adoption allowances scheme is a scheme for or in connection with the payment by the agency of allowances to any person who has adopted, or intends to adopt, a child in any case where arrangements for the adoption were made or, as the case may be, are to be made by the agency.

(3) The Scottish Ministers may by regulations make provision for or in connection with adoption allowances schemes.

(4) Regulations under subsection (3) may in particular make provision for or in connection with specifying—

(a) the procedure to be followed by an agency in determining whether a person should be paid an allowance,

(b) the circumstances in which an allowance may be paid,

(c) the factors to be taken into account in determining the amount of an allowance,

(d) the procedure for review, variation and termination of allowances,

(e) the information about allowances which is to be supplied by an agency to a person who intends to adopt a child, and

(f) the procedure to be followed by an agency in preparing, modifying or revoking an adoption allowances scheme.

Commencement Information

I94 S. 71(1)(a)(3)(4) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I95 S. 71(1)(a)(3)(4) in force at 28.9.2009 in so far as not already in force by 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)

I96 S. 71(1)(b)(2) in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Prohibited payments

72 Prohibition of certain payments

(1) This section applies to any payment (other than an excepted payment) which is made to any person for or in consideration of—
- (a) the adoption by that person of a child,
- (b) the giving by that person of any consent required in connection with the adoption of a child,
- (c) the transfer by that person of the care of a child with a view to the adoption of the child, or
- (d) the making by that person of any arrangements for the adoption of a child.

(2) Any person who—
- (a) makes any payment to which this section applies,
- (b) agrees or offers to make any such payment,
- (c) receives, or agrees to receive, any such payment, or
- (d) attempts to obtain any such payment,

commits an offence.

(3) A person who commits an offence under subsection (2) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

(4) Where a person is convicted of an offence under subsection (2), the court may, without prejudice to any power which it has to make any other order in relation to the child as respects whom the offence was committed, order the child to be removed to a place of safety until—
- (a) the child can be returned to the child's parent or guardian, or
- (b) other arrangements can be made for the child.

(5) In this section—

"payment" includes reward,

"place of safety" has the meaning given by section 93(1) of the 1995 Act.

Commencement Information

I97 S. 72 in force at 28.9.2009 by 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)

73 Excepted payments

(1) A payment is an excepted payment if it is made by virtue of, or in accordance with, provision made by virtue of this Act, the 2002 Act or the Northern Ireland Order.

(2) A payment is an excepted payment if—
- (a) it is made to an adoption agency by—
  - (i) a parent or guardian of the child, or
  - (ii) a person who adopts, or proposes to adopt, a child,

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in respect of expenses reasonably incurred by the agency in connection with the adoption, or proposed adoption, of the child,

(b) it is made in respect of any legal or medical expenses incurred or to be incurred by any person in connection with an application which the person has made, or proposes to make, for an adoption order or an order under section 59,

(c) it is authorised by the court to which an application for an adoption order is made,

(d) it is made by an adoption agency to another adoption agency in consideration of placing the child for adoption,

(e) it is made by an adoption agency to a voluntary organisation for the time being approved for the purposes of this paragraph by the Scottish Ministers as a fee for the services of the organisation in putting the agency in touch with another adoption agency with a view to the making of arrangements between the adoption agencies for the adoption of a child.

(3) In this section, "payment" includes reward.

Commencement Information

I98 S. 73 in force at 28.9.2009 by 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)

Disclosure of medical information about parents

74 Disclosure of medical information about parents

(1) The Scottish Ministers may by regulations make provision for or in connection with disclosure of information about the health of the natural parents of a child who is to be, may be or has been adopted ("the relevant child").

(2) In making regulations under subsection (1), the Scottish Ministers must secure that a person to whom information is disclosed by virtue of the regulations has a duty of confidentiality in relation to the information.

(3) Notwithstanding subsection (2), regulations under subsection (1) may include provision enabling a person to whom information is disclosed by virtue of the regulations, in such circumstances and to such an extent as may be specified in the regulations, to disclose the information to—

(a) the relevant child,

(b) persons who are to or may adopt, or have adopted, the relevant child.

(4) Regulations under subsection (1) may, in particular, include provision for or in connection with specifying—

(a) the descriptions of person by whom, and to whom, information may be disclosed,

(b) the circumstances in which information may be disclosed,

(c) the type of information which may, or may not, be disclosed,

(d) the circumstances in which consent to disclosure of information need not be obtained,

(e) the processing of information by a person to whom information is disclosed.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(5) In subsection (4)(e), "processing" has the same meaning as in section 1(1) of the Data Protection Act 1998 (c. 28).

Commencement Information

I99 S. 74 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I100 S. 74 in force at 28.9.2009 in so far as not already in force by 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)

Restrictions on arranging adoptions and placing for adoption

75 Restriction on arranging adoptions and placing children

(1) Subject to subsection (2), a person other than an adoption agency who—

(a) makes arrangements for the adoption of a child, or

(b) places a child for adoption,

commits an offence.

(2) Subsection (1) does not apply if the person proposing to adopt the child or, as the case may be, the person with whom the child is placed is—

(a) a parent of the child,

(b) any other relative of the child, or

(c) where a parent of the child is a member of a relevant couple, the other member of the couple.

(3) A person who receives a child placed in contravention of subsection (1) knowing that the placement is with a view to the person's adopting the child commits an offence.

(4) A person who takes part in the management or control of a body of persons—

(a) which exists wholly or partly for the purpose of making arrangements for the adoption of children, and

(b) which is not an adoption agency,

commits an offence.

(5) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

(6) In any proceedings for an offence under subsection (4), proof of—

(a) things done, or

(b) words written, spoken or published,

by any person taking part in the management or control of the body of persons, or in making arrangements for the adoption of children on behalf of the body, is sufficient evidence of the purpose for which that body exists.

(7) It is immaterial whether the actions mentioned in paragraphs (a) and (b) of subsection (6) are carried out in the presence of a party to the proceedings.

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Commencement Information

I101 S. 75 in force at 28.9.2009 by 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)

76 Adoption societies which are not registered adoption services

(1) Subsection (2) applies where—

(a) an adoption society is—

(i) a registered adoption society, or

(ii) registered as respects Northern Ireland under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431), and

(b) the society is not a registered adoption service.

(2) Except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 3(1) of that Act or, as the case may be, Article 3 of the Northern Ireland Order, it must not act as an adoption society in Scotland.

Commencement Information

I102 S. 76 in force at 28.9.2009 by 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)

Effect of orders, and placing for adoption, under 2002 Act

77 Effect of certain orders made in England and Wales

(1) An adoption order (within the meaning of section 46(1) of the 2002 Act) has effect in Scotland as it has in England and Wales but as if any reference to the parental responsibility for the child were to the parental responsibilities and parental rights in relation to the child.

(2) An order made under section 21 of that Act (placement orders), and the variation or revocation of such an order under section 23 or 24 of that Act, have effect in Scotland as they have in England and Wales but as if any reference to the parental responsibility for the child were to the parental responsibilities and parental rights in relation to the child.

Commencement Information

I103 S. 77 in force at 28.9.2009 by 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)

78 Effect of placing for adoption etc. under 2002 Act

(1) If—

(a) a child is placed for adoption under section 19 of the 2002 Act (placing children with parental consent), or

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(b) an adoption agency is authorised to place a child for adoption under that section,

sections 25 (parental responsibility) and 28(2) to (4) (further consequences of placement) of that Act have effect in Scotland as they have in England and Wales but with the modifications specified in subsection (2).

(2) Those modifications are—

(a) in section 25, any reference to the parental responsibility for the child is to be read as a reference to the parental responsibilities and parental rights in relation to the child, and

(b) in section 28(2), the reference to the court is to be read as a reference to the appropriate court.

Commencement Information

I104 S. 78 in force at 28.9.2009 by 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)

79 Further consequences of placement and placement orders

(1) Subsection (2) applies where—

(a) a child is placed for adoption under section 19 of the 2002 Act (placing children with parental consent), or

(b) an adoption agency is authorised to place a child for adoption under that section.

(2) No order under subsection (1) of section 11 of the 1995 Act (court orders relating to parental responsibilities etc.) of a kind mentioned in subsection (2)(c) (residence orders) of that section may be made in respect of the child.

(3) On the making of an order under section 21 of the 2002 Act (a "placement order") in respect of a child, any order under subsection (1) of section 11 of the 1995 Act of a kind mentioned in subsection (2)(c) to (f) (residence orders, contact orders, specific issue orders and interdicts in relation to parental responsibilities) of that section in respect of the child ceases to have effect.

(4) Where a placement order is in force—

(a) no such order as is mentioned in subsection (3) of this section, and

(b) no order under section 55 of the 1995 Act (child assessment orders),

may be made in respect of the child.

Commencement Information

I105 S. 79 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
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PART 2

PERMANENCE ORDERS

The making of permanence orders

80 Permanence orders

(1) The appropriate court may, on the application of a local authority, make a permanence order in respect of a child.

(2) A permanence order is an order consisting of—
- (a) the mandatory provision,
- (b) such of the ancillary provisions as the court thinks fit, and
- (c) if the conditions in section 83 are met, provision granting authority for the child to be adopted.

(3) In making a permanence order in respect of a child, the appropriate court must secure that each parental responsibility and parental right in respect of the child vests in a person.

Commencement Information

I106 S. 80 in force at 28.9.2009 by 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)

81 Permanence orders: mandatory provision

(1) The mandatory provision is provision vesting in the local authority for the appropriate period—
- (a) the responsibility mentioned in section 1(1)(b)(ii) of the 1995 Act (provision of guidance appropriate to child's stage of development) in relation to the child, and
- (b) the right mentioned in section 2(1)(a) of that Act (regulation of child's residence) in relation to the child.

(2) In subsection (1) "the appropriate period" means—
- (a) in the case of the responsibility referred to in subsection (1)(a), the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 18,
- (b) in the case of the right referred to in subsection (1)(b), the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 16.

Commencement Information

I107 S. 81 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
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82 Permanence orders: ancillary provisions

(1) The ancillary provisions are provisions—

(a) vesting in the local authority for the appropriate period—

(i) such of the parental responsibilities mentioned in section 1(1)(a), (b)(i) and (d) of the 1995 Act, and

(ii) such of the parental rights mentioned in section 2(1)(b) and (d) of that Act,

in relation to the child as the court considers appropriate,

(b) vesting in a person other than the local authority for the appropriate period—

(i) such of the parental responsibilities mentioned in section 1(1) of that Act, and

(ii) such of the parental rights mentioned in section 2(1)(b) to (d) of that Act,

in relation to the child as the court considers appropriate,

(c) extinguishing any parental responsibilities which, immediately before the making of the order, vested in a parent or guardian of the child, and which—

(i) by virtue of section 81(1)(a) or paragraph (a)(i), vest in the local authority, or

(ii) by virtue of paragraph (b)(i), vest in a person other than the authority,

(d) extinguishing any parental rights in relation to the child which, immediately before the making of the order, vested in a parent or guardian of the child, and which—

(i) by virtue of paragraph (a)(ii), vest in the local authority, or

(ii) by virtue of paragraph (b)(ii), vest in a person other than the authority,

(e) specifying such arrangements for contact between the child and any other person as the court considers appropriate and to be in the best interests of the child, and

(f) determining any question which has arisen in connection with—

(i) any parental responsibilities or parental rights in relation to the child, or

(ii) any other aspect of the welfare of the child.

(2) In subsection (1), "the appropriate period" means—

(a) in the case of the responsibility mentioned in section 1(1)(b)(ii) of the 1995 Act, the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 18,

(b) in any other case, the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 16.

Commencement Information

I108 S. 82 in force at 28.9.2009 by 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)

83 Order granting authority for adoption: conditions

(1) The conditions referred to in section 80(2)(c) are—

Status: *Point in time view as at 01/10/2009.*
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(a) that the local authority has, in the application for the permanence order, requested that the order include provision granting authority for the child to be adopted,

(b) that the court is satisfied that the child has been, or is likely to be, placed for adoption,

(c) that, in the case of each parent or guardian of the child, the court is satisfied—

(i) that the parent or guardian understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child, or

(ii) that the parent's or guardian's consent to the making of such an order should be dispensed with on one of the grounds mentioned in subsection (2),

(d) that the court considers that it would be better for the child if it were to grant authority for the child to be adopted than if it were not to grant such authority.

(2) Those grounds are—

(a) that the parent or guardian is dead,

(b) that the parent or guardian cannot be found or is incapable of giving consent,

(c) that subsection (3) or (4) applies,

(d) that, where neither of those subsections applies, the welfare of the child otherwise requires the consent to be dispensed with.

(3) This subsection applies if the parent or guardian—

(a) has parental responsibilities or parental rights in relation to the child other than those mentioned in sections 1(1)(c) and 2(1)(c) of the 1995 Act,

(b) is, in the opinion of the court, unable satisfactorily to—

(i) discharge those responsibilities, or

(ii) exercise those rights, and

(c) is likely to continue to be unable to do so.

(4) This subsection applies if—

(a) the parent or guardian has, by virtue of the making of a permanence order which does not include provision granting authority for the child to be adopted, no parental responsibilities or parental rights in relation to the child, and

(b) it is unlikely that such responsibilities will be imposed on, or such rights given to, the parent or guardian.

(5) In subsections (1)(c) and (2), "parent", in relation to the child in respect of whom the permanence order is to be made, means—

(a) a parent who has any parental responsibilities or parental rights in relation to the child, or

(b) a parent who, by virtue of a permanence order which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

Commencement Information

I109 S. 83 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
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84 Conditions and considerations applicable to making of order

(1) Except where subsection (2) applies, a permanence order may not be made in respect of a child who is aged 12 or over unless the child consents.

(2) This subsection applies where the court is satisfied that the child is incapable of consenting to the order.

(3) The court may not make a permanence order in respect of a child unless it considers that it would be better for the child that the order be made than that it should not be made.

(4) In considering whether to make a permanence order and, if so, what provision the order should make, the court is to regard the need to safeguard and promote the welfare of the child throughout childhood as the paramount consideration.

(5) Before making a permanence order, the court must—

(a) after taking account of the child's age and maturity, so far as is reasonably practicable—

(i) give the child the opportunity to indicate whether the child wishes to express any views, and

(ii) if the child does so wish, give the child the opportunity to express them,

(b) have regard to—

(i) any such views the child may express,

(ii) the child's religious persuasion, racial origin and cultural and linguistic background, and

(iii) the likely effect on the child of the making of the order, and

(c) be satisfied that—

(i) there is no person who has the right mentioned in subsection (1)(a) of section 2 of the 1995 Act to have the child living with the person or otherwise to regulate the child's residence, or

(ii) where there is such a person, the child's residence with the person is, or is likely to be, seriously detrimental to the welfare of the child.

(6) A child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of subsection (5)(a).

Commencement Information

I110 S. 84 in force at 28.9.2009 by 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)

85 Child in respect of whom order may be made

(1) A permanence order may be made in respect of a child who is an adopted child.

(2) A permanence order may not be made in respect of a child who is or has been—

(a) married,

(b) a civil partner.

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Commencement Information

I111 S. 85 in force at 28.9.2009 by 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)

86 Representations

(1) In any proceedings relating to an application for a permanence order, the appropriate court must permit any person mentioned in subsection (2) who wishes to make representations to the court to do so.

(2) Those persons are—

(a) the local authority making the application,

(b) the child or the child's representative,

(c) any person who has parental responsibilities or parental rights in relation to the child,

(d) any other person who claims an interest.

Commencement Information

I112 S. 86 in force at 28.9.2009 by 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)

Effect of order

87 Effect of order on existing parental right

The making of a permanence order extinguishes the parental right mentioned in subsection (1)(a) of section 2 of the 1995 Act of—

(a) a parent of the child in respect of whom the order is made,

(b) a guardian of such a child,

which, immediately before the making of the order, vested in the parent or, as the case may be, guardian.

Commencement Information

I113 S. 87 in force at 28.9.2009 by 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)

88 Effect of order on existing orders

(1) This section applies where—

(a) parental responsibilities or parental rights in relation to a child vest in a person by virtue of—

(i) a permanence order, or

(ii) an order under section 11 of the 1995 Act (court orders relating to parental responsibilities etc.),

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

("the existing order"), and

(b) the appropriate court intends to make a permanence order ("the new order") as respects the child.

(2) On the making of the new order, the existing order is revoked.

(3) In making the new order, the court must secure that the parental responsibilities or parental rights vesting by virtue of the existing order vest in a person under the new order.

Commencement Information

I114 S. 88 in force at 28.9.2009 by 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)

Revocation of supervision requirement

89 Revocation of supervision requirement

(1) Subsection (2) applies where—

(a) the child in respect of whom a permanence order is to be made is subject to a supervision requirement, and

(b) the appropriate court is satisfied that, were it to make a permanence order in respect of the child, compulsory measures of supervision in respect of the child would no longer be necessary.

(2) The court must make an order providing that, on the making of the permanence order, the supervision requirement ceases to have effect.

Commencement Information

I115 S. 89 in force at 28.9.2009 by 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)

Precedence

90 Precedence of court orders and supervision requirements over order

(1) Subsection (2) applies where a local authority has, by virtue of a permanence order, parental responsibilities or parental rights in relation to a child.

(2) The local authority must not act in any way which would be incompatible with—

(a) any other court order of which the authority is aware relating to the child or the child's property,

(b) any supervision requirement to which the child is subject.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Commencement Information

I116 S. 90 in force at 28.9.2009 by 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)

Exercise of parental right under order

91 Exercise of parental right under order

(1) Subsection (2) applies where—

(a) two or more persons have a parental right in relation to a child, and

(b) by virtue of paragraph (a) or (b) of subsection (1) of section 82, the right vests in one of them or, as the case may be, two or more of them.

(2) Each of the persons mentioned in subsection (1)(a) may exercise the right without the consent of the other or, as the case may be, any of the others.

(3) Subsection (2) does not apply where an order vesting the right, or regulating its exercise, provides otherwise.

Commencement Information

I117 S. 91 in force at 28.9.2009 by 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)

Variation

92 Variation of ancillary provisions in order

(1) This section applies where a permanence order which includes ancillary provisions is in force.

(2) The appropriate court may, on an application by a person mentioned in subsection (3), vary such of the ancillary provisions as the court considers appropriate.

(3) Those persons are—

(a) the local authority on whose application the permanence order was made,

(b) if the child in respect of whom the order was made is—

(i) aged 12 or over, or

(ii) under the age of 12 but, in the court's opinion (taking account of the child's age and maturity), capable of understanding the effect of the order,

that child,

(c) any person in whom parental responsibilities and parental rights are vested by virtue of the order,

(d) any person in whom were vested, immediately before the making of the order, any parental responsibilities or parental rights which, by virtue of the making of the order, vest in another person,

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(e) any person in whom were vested, immediately before a variation by virtue of this section of the order, parental responsibilities or parental rights which, by virtue of the variation, vest in another person,

(f) any other person who claims an interest.

(4) Subsection (5) applies where the court exercises its power under subsection (2) to vary the ancillary provisions so as to vest, by virtue of paragraph (a) or (b) of subsection (1) of section 82, in a person a parental responsibility or a parental right which, immediately before the variation, vested in another person.

(5) The court may include in the order as varied provision extinguishing the responsibility or right of that other person.

(6) Subsections (4), (5)(a) and (b) and (6) of section 84 apply to the variation of a permanence order under this section as they apply to the making of such an order.

(7) In subsections (1) and (2), "ancillary provisions" has the same meaning as in section 82.

(8) In this section, "vary" includes add to, omit, or amend; and "variation" is to be construed accordingly.

Commencement Information

I118 S. 92 in force at 28.9.2009 by 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)

93 Amendment of order to grant authority for child to be adopted

(1) This section applies where—

(a) a permanence order in respect of a child is in force, and

(b) the order does not include provision granting authority for the child to be adopted.

(2) On the application of the local authority on whose application the order was made, the appropriate court may amend the order so as to include provision granting authority for the child to be adopted if (and only if)—

(a) the court is satisfied that the child has been placed for adoption, or is likely to be placed for adoption,

(b) the court is satisfied that the condition in subsection (3) or subsection (4) is met, and

(c) the court considers that it would be better for the child that authority for the child to be adopted is granted than that it should not be granted.

(3) The condition is that each parent or guardian of the child understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child.

(4) The condition is that the consent of each parent or guardian should be dispensed with on any of the grounds mentioned in section 83.

(5) Subsections (4), (5)(a) and (b) and (6) of section 84 apply to the amendment of a permanence order under this section as they apply to the making of such an order.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(6) In subsections (3) and (4)—

"guardian", in relation to a child in respect of whom a permanence order to which this section applies is in force, means a guardian—

(a) who has any parental responsibilities or parental rights in relation to the child, or

(b) who, by virtue of the making of a previous such order, no longer has any such responsibilities or rights,

"parent", in relation to a child in respect of whom a permanence order to which this section applies is in force, means a parent—

(a) who has any parental responsibilities or parental rights in relation to the child, or

(b) who, by virtue of the making of a previous such order, no longer has any such responsibilities or rights.

Commencement Information

I119 S. 93 in force at 28.9.2009 by 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)

94 Proceedings

(1) In any proceedings for variation of a permanence order by the local authority on whose application the order was granted, the appropriate court must permit any person who is affected by the order, and who wishes to make representations to the court, to do so.

(2) In any proceedings for variation of a permanence order by a person other than the local authority on whose application the order was granted, the appropriate court must permit any person mentioned in subsection (3) who wishes to make representations to the court to do so.

(3) Those persons are—

(a) the local authority on whose application the permanence order was made,

(b) if the child in respect of whom the original order was made is—

(i) aged 12 or over, or

(ii) under the age of 12 but, in the court's opinion (taking account of the child's age and maturity), is capable of understanding the effect of the order,

that child,

(c) any person who has parental responsibilities or parental rights in relation to the child,

(d) any person on whom a duty was imposed, or power conferred, by the order,

(e) any person in whom were vested, immediately before the making of the order, any parental responsibilities or parental rights which, by virtue of the making of the order, vest in another person,

(f) any person in whom were vested, immediately before a variation by virtue of section 92 of the order, parental responsibilities or parental rights which, by virtue of the variation, vest in another person, and

(g) any other person who claims an interest.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(4) A person other than the local authority on whose application a permanence order was granted may not apply to the court for a variation of the order without first obtaining the leave of the court.

(5) If the court is satisfied—
  (a) that there has been a material change in the circumstances directly relating to any of the order's provisions, or
  (b) that for any other reason it is proper to allow the application to be made,

it must grant that leave.

(6) In determining whether there has been a material change in circumstances, the court must have regard, in particular, to any aspect of—
  (a) the welfare of the child in respect of whom the permanence order was made, and
  (b) the circumstances of—
    (i) a parent, or the parents, of the child,
    (ii) the child's guardian, or
    (iii) any person mentioned in paragraph (e) or (f) of subsection (3).

(7) In subsection (1), the reference to variation of a permanence order includes a reference to amendment of the order to include provision granting authority for the child to whom the order relates to be adopted.

Commencement Information

I120 S. 94 in force at 28.9.2009 by 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)

Orders and supervision requirements

95 Duty of children's hearing to prepare report for court

(1) Subsection (2) applies where—
  (a) an application is made for a permanence order, or variation of such an order, in respect of a child,
  (b) the application has not been determined (or, as the case may be, withdrawn or abandoned), and
  (c) a children's hearing proposes to—
    (i) make a supervision requirement in respect of the child, or
    (ii) modify, under paragraph (c) or (d) of subsection (9) of section 73 of the 1995 Act, a supervision requirement that has been made in respect of the child.

(2) The children's hearing must prepare for the court to which the application has been made a report containing such information as the Scottish Ministers may by regulations prescribe.

(3) In subsection (1)(a), the reference to variation of a permanence order includes a reference to amendment of the order to include provision granting authority for the child to whom the order relates to be adopted.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Commencement Information

I121 S. 95(1)(3) in force at 28.9.2009 by 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)

I122 S. 95(2) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I123 S. 95(2) in force at 28.9.2009 in so far as not already in force by 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)

96 Application: effect on supervision requirement

(1) Subsection (2) applies where an application is made for a permanence order, or variation of such an order, in respect of a child.

(2) A supervision requirement in respect of the child may not be—

(a) made, or

(b) modified under paragraph (c) or (d) of subsection (9) of section 73 of the 1995 Act,

until the application is determined (or, as the case may be, withdrawn or abandoned).

(3) Subsection (2) does not apply if the court to which the application is made refers the child's case to the Principal Reporter (whether following receipt of a report under section 95 or otherwise).

(4) In subsection (1), the reference to variation of a permanence order includes a reference to amendment of the order to include provision granting authority for the child to whom the order relates to be adopted.

(5) In subsection (3), "Principal Reporter" has the same meaning as in Part II of the 1995 Act.

Commencement Information

I124 S. 96 in force at 28.9.2009 by 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)

97 Interim orders and revocation of supervision requirement

(1) Subsection (2) applies where an application is made for a permanence order, or variation of such an order, in respect of a child.

(2) The appropriate court may make such interim order as it thinks fit.

(3) Subsection (4) applies where—

(a) the child in respect of whom an interim order is to be made is subject to a supervision requirement, and

(b) the court is satisfied that, were it to make an interim order in relation to the child, compulsory measures of supervision in respect of the child would no longer be necessary.

(4) The court must make an order providing that, on the making of the interim order, the supervision requirement ceases to have effect.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(5) If—

(a) the child in respect of whom an interim order is made is subject to a supervision requirement, and

(b) the provisions of the order conflict, or are otherwise inconsistent, with the requirement,

the provisions of the order prevail.

(6) In subsection (1), the reference to variation of a permanence order includes a reference to amendment of the order to include provision granting authority for the child to whom the order relates to be adopted.

Commencement Information

I125 S. 97 in force at 28.9.2009 by 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)

Revocation and variation

98 Revocation

(1) The appropriate court may, on an application by a person mentioned in subsection (2), revoke a permanence order if satisfied that it is appropriate to do so in all the circumstances of the case, including, in particular—

(a) a material change in the circumstances directly relating to any of the order's provisions,

(b) any wish by the parent or guardian of the child in respect of whom the order was made to have reinstated any parental responsibilities or parental rights vested in another person by virtue of the order.

(2) Those persons are—

(a) the local authority on whose application the order was made,

(b) any other person affected by the order who has obtained the leave of the court to apply for revocation of the order.

(3) Subsections (4), (5)(a) and (b) and (6) of section 84 apply to the revocation of a permanence order under this section as they apply to the making of such an order.

Commencement Information

I126 S. 98 in force at 28.9.2009 by 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)

99 Duty of local authority to apply for variation or revocation

(1) Subsection (2) applies where a local authority on whose application a permanence order was made determines that—

(a) there has been a material change in the circumstances directly relating to any of the order's provisions, and

(b) in consequence of that change, the order ought to be varied or revoked.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(2) The authority must, as soon as is reasonably practicable, apply to the appropriate court for variation or, as the case may be, revocation of the order.

(3) In this section, "variation", in relation to the permanence order, includes amendment of the order so as to include provision granting authority for the child to whom the order relates to be adopted; and "varied" is to be construed accordingly.

Commencement Information

I127 S. 99 in force at 28.9.2009 by 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)

100 Revocation: order under section 11 of 1995 Act

(1) Subsection (2) applies where the appropriate court revokes a permanence order in respect of a child.

(2) The court must consider whether to make an order under section 11 of the 1995 Act—

(a) imposing on a person specified in the order parental responsibilities in relation to the child, and

(b) giving to such a person parental rights in relation to the child.

Commencement Information

I128 S. 100 in force at 28.9.2009 by 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)

Notification requirements

101 Local authority to give notice of certain matters

(1) This section applies where—

(a) a permanence order includes provision granting authority for the child to be adopted,

(b) after the order is made or, as the case may be, amended under section 93(2) so as to include that provision, an event mentioned in subsection (2) occurs, and

(c) the order has not been revoked under section 98(1).

(2) Those events are—

(a) the child is placed for adoption,

(b) an adoption order is made in respect of the child,

(c) the child ceases to be placed for adoption otherwise than on the making of an adoption order.

(3) As soon as is reasonably practicable after the occurrence of the event, the local authority on whose application the permanence order was made must give notice of the event to any person falling within subsection (4).

(4) A person falls within this subsection if—

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(a) the person consented under section 83(1)(c)(i) or 93(3) to the making of the order,

(b) the person's consent to the making of the order was dispensed with under section 83(1)(c)(ii) or 93(4).

(5) The local authority need not comply with the requirement imposed by subsection (3) in relation to a person if the person has given notice to that effect to the authority.

Commencement Information

I129 S. 101 in force at 28.9.2009 by 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)

Effect of subsequent adoption order on permanence order

102 Effect of subsequent adoption order on permanence order

(1) Subsection (2) applies where—

(a) a permanence order is in force in respect of a child, and

(b) an adoption order is made in respect of the child.

(2) The permanence order ceases to have effect on the making of the adoption order.

Commencement Information

I130 S. 102 in force at 28.9.2009 by 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)

Restriction on making certain orders under 1995 Act

103 Restriction on making of orders under section 11 of 1995 Act

After section 11 of the 1995 Act insert the following section—

"**11A Restriction on making of orders under section 11**

(1) Subsection (2) applies where a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)) is in force in respect of a child.

(2) The court may not, under subsection (1) of section 11 of this Act, make an order such as is mentioned in any of paragraphs (a) to (e) of subsection (2) of that section.".

Commencement Information

I131 S. 103 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Rules of procedure

104 Permanence orders: rules of procedure

(1) Provision may be made by rules of court in respect of—

(a) applications for permanence orders,

(b) applications for variation, or revocation, of permanence orders,

(c) applications for leave to apply for such variation or revocation.

(2) In the case of an application for a permanence order containing a request that the order include provision granting authority for the child to be adopted, or an application made by virtue of section 93(2), rules must require—

(a) any person mentioned in subsection (3)(a) to be notified of the matters mentioned in subsection (4), and

(b) the person mentioned in subsection (3)(b) (if he can be found) to be notified of the matters mentioned in paragraphs (a) and (b) of subsection (4).

(3) Those persons are—

(a) every person who can be found and whose consent to the making of the order is required to be given or dispensed with under this Act or, if no such person can be found, any relative prescribed by the rules who can be found,

(b) if the father of the child in relation to whom the order is to be made does not have, and has never had, parental responsibilities or parental rights in relation to the child, the father of the child.

(4) Those matters are—

(a) that the application has been made,

(b) the date on which, and place where, the application will be heard,

(c) the fact that the person is entitled to be heard on the application,

(d) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.

(5) In subsection (1), any references to an application for variation of a permanence order include references to an application to amend the order to include provision granting authority for the child to whom the order relates to be adopted.

Commencement Information

I132 S. 104 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I133 S. 104 in force at 28.9.2009 in so far as not already in force by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

PART 3

MISCELLANEOUS

Provisions applicable to adoption orders and permanence orders

105 Notification of proposed application for order

(1) Subsection (2) applies where—

(a) a local authority—

(i) proposes to make an application for a permanence order in respect of a child, or

(ii) becomes aware that an application for an adoption order in respect of a child in its area has been, or is to be, made,

(b) the father of the child is not married to the mother of the child on the relevant date,

(c) the father, never having had parental responsibilities or parental rights in relation to the child, does not have such responsibilities or rights on the relevant date, and

(d) the authority—

(i) knows the identity and whereabouts of the father, or

(ii) can, by taking such reasonable and practicable steps as are appropriate in the circumstances of the case, ascertain that information.

(2) The local authority must, on or after the relevant date—

(a) give notice to the father that—

(i) it proposes to apply for a permanence order,

(ii) an application for an adoption order has been made, or

(iii) an application for an adoption order is to be made,

as the case may be, and

(b) provide the father with prescribed information relating to the processes for applying for the order in question.

(3) Where a local authority is required to give notice under subsection (2)(a)(i), it must give the notice at least 4 weeks before the application for the permanence order is made.

(4) Where a local authority is required to give notice under sub-paragraph (ii) or (iii) of subsection (2)(a), it must give the notice as soon as is reasonably practicable after it becomes aware that the application for an adoption order has been or, as the case may be, is to be made.

(5) In this section—

(a) "relevant date" means—

(i) the date on which the local authority determines it will make the application mentioned in sub-paragraph (i) of subsection (1)(a), or

(ii) the date on which the authority becomes aware of the application mentioned in sub-paragraph (ii) of that subsection,

as the case may be,

(b) "prescribed" means prescribed by regulations made by the Scottish Ministers.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Commencement Information

I134 S. 105 in force at 28.9.2009 by 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)

106 Child subject to supervision requirement: duty to refer to Principal Reporter

(1) Subsection (2) applies where—

(a) a child is subject to a supervision requirement,

(b) a registered adoption service is satisfied that the best interests of the child would be served by placing the child for adoption, and

(c) it intends to place the child for adoption.

(2) The registered adoption service must refer the child's case to the Principal Reporter.

(3) The Scottish Ministers may make regulations specifying by reference to the occurrence of an event or events described in the regulations the period of time during which a referral under this section is to be made.

(4) In subsection (2), "Principal Reporter" has the same meaning as in Part II of the 1995 Act.

Commencement Information

I135 S. 106(1)(2) in force at 28.9.2009 by 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)

I136 S. 106(3) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I137 S. 106(3) in force at 28.9.2009 in so far as not already in force by 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)

107 Making of adoption order no longer to be bar to making of contact order

In section 11 of the 1995 Act (court orders relating to parental responsibilities etc.), in subsection (3)—

(a) in paragraph (a), sub-paragraph (iii) is repealed,

(b) after that paragraph insert—

"(aa) that application for a contact order is made with the leave of the court by a person whose parental responsibilities or parental rights in relation to the child were extinguished on the making of an adoption order;

(ab) that application for an order under subsection (1) above (other than a contact order) is made by a person who has had, but for a reason other than is mentioned in subsection (4) below, no longer has, parental responsibilities or parental rights in relation to the child;", and

(c) in paragraph (b), for "such application" substitute " application for an order under subsection (1) above ".

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Commencement Information

I138 S. 107 in force at 28.9.2009 by 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)

108 Rules: appointment of curators ad litem and reporting officers

(1) In the case of an application for a relevant order in relation to a child, rules of court must provide for the appointment, in such cases as are prescribed by the rules—

(a) of a person to act as curator *ad litem* of the child on the hearing of the application, with the duty of safeguarding the interests of the child in such manner as may be so prescribed,

(b) of a person to act as reporting officer for the purpose of witnessing agreements to adoption and performing such other duties as may be so prescribed.

(2) Rules may in particular make provision—

(a) enabling the reporting officer to be appointed before the application is made,

(b) enabling the court to appoint the same person to be curator *ad litem* and reporting officer.

(3) Rules may not make provision for—

(a) the appointment of a person who is employed by an adoption agency which has placed a child for adoption to act as curator *ad litem* or reporting officer for the purposes of an application for an adoption order in respect of the child,

(b) the appointment of a person who is employed by a local authority which is making (or has made) an application for a permanence order to act as curator *ad litem* or reporting officer for the purposes of the application.

(4) A relevant order means—

(a) an adoption order,

(b) a permanence order, or

(c) an order under section 59.

Commencement Information

I139 S. 108 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I140 S. 108 in force at 28.9.2009 in so far as not already in force by 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)

109 Proceedings to be in private

(1) Any proceedings before the court relating to applications under any of the provisions mentioned in subsection (2) must be heard and determined in private unless the court otherwise directs.

(2) Those provisions are—

(a) section 24,

(b) section 29,

(c) section 30,

(d) section 59,

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(e) section 80,
(f) section 92,
(g) section 93, and
(h) section 99.

Commencement Information

I141 S. 109 in force at 28.9.2009 by 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)

Care allowances: regulations

110 Allowances for care of certain children: regulations

(1) The Scottish Ministers may by regulations make provision about payments by a local authority in respect of a child who falls within subsection (2).

(2) A child falls within this subsection if—
(a) the child is placed by the authority under section 26(1)(a) of the 1995 Act,
(b) the child is required by virtue of section 70(3)(a) of that Act to reside with a person other than a parent of the child, or
(c) were the child not residing with a relative, the authority would be required by section 25(1) of that Act to provide accommodation for the child.

(3) Regulations under subsection (1) may in particular include provision for or in connection with—
(a) specifying descriptions of person to whom payments may be made,
(b) specifying circumstances in which payments may be made,
(c) specifying rates of payment to be payable in such circumstances as may be specified in the regulations,
(d) where a rate is so specified—
(i) requiring local authorities to pay at least that rate in the circumstances so specified,
(ii) recommending that local authorities pay at least that rate ("the recommended rate") in the circumstances so specified,
(e) where a recommended rate is payable, requiring local authorities which pay less than that rate to publish, in such manner as may be so specified, their reasons for doing so.

(4) A child does not cease to fall within paragraph (a) of subsection (2) by reason only of the making of a permanence order vesting parental responsibilities in a person who is a member of the family with whom the child was placed.

(5) A child does not fall within paragraph (c) of subsection (2) if the relative is a guardian of the child.

(6) It is immaterial for the purposes of paragraph (c) of subsection (2) whether the relative has any parental rights or parental responsibilities in relation to the child.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Commencement Information

I142 S. 110 in force at 28.9.2009 by 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)

Evidence and notices

111 Evidence of consent

(1) If a document signifying any consent which is required by this Act to be given is witnessed in accordance with rules of court, it is sufficient evidence of the signature of the person by whom it was executed.

(2) A document signifying any such consent which purports to be witnessed in accordance with rules is to be presumed to be so witnessed and to have been executed and witnessed on the date and at the place specified in the document unless the contrary is shown.

Commencement Information

I143 S. 111 in force at 28.9.2009 by 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)

112 Service of notices etc.

Any notice or information required to be given under this Act may be given by post.

Commencement Information

I144 S. 112 in force at 28.9.2009 by 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)

113 Admissibility of certain documents as evidence

Any document which is receivable as evidence of any matter—

(a) in England and Wales under section 77(4) and (5) of the 2002 Act, or

(b) in Northern Ireland under Article 63(1) of the Northern Ireland Order,

is sufficient evidence in Scotland of the matter to which it relates.

Commencement Information

I145 S. 113 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

PART 4

GENERAL

114 Rules of procedure

(1) Provision may be made by rules of court 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) In the case of an application for an adoption order, the rules must require—

(a) any person mentioned in subsection (3) to be notified of the matters mentioned in subsection (4), and

(b) the person mentioned in subsection (5) (if he can be found) to be notified of the matters mentioned in paragraphs (a) and (b) of subsection (4).

(3) Those persons are—

(a) every person who can be found and whose consent to the making of the order is required to be given or dispensed with under this Act or, if no such person can be found, any relative prescribed by rules who can be found,

(b) every person who has consented to the making of the order under section 20 of the 2002 Act (and has not withdrawn the consent) unless the person has given a notice under subsection (4)(a) of that section which has effect,

(c) every person who, if leave were given under section 31(12), would be entitled to oppose the making of the order.

(4) Those matters are—

(a) that the application has been made,

(b) the date on which, and place where, the application will be heard,

(c) the fact that the person is entitled to be heard on the application, and

(d) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.

(5) The person is the father of the child to be adopted if he does not have, and has never had, parental responsibilities or parental rights in relation to the child.

(6) In the case of an application under section 59, rules of court must require every person who can be found, and whose consent to the making of the order would be required if the application were for an adoption order (other than a Convention adoption order) to be notified of the matters mentioned in subsection (4).

Commencement Information

I146 S. 114 in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I147 S. 114 in force at 28.9.2009 in so far as not already in force by 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)

115 Offences by bodies corporate and partnerships

(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, a relevant person, the relevant person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(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 the member's functions of management as if the member were a relevant person.

(3) 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, the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) In this section, "relevant person", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Commencement Information

I148 S. 115 in force at 28.9.2009 by 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)

116 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider necessary for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.

(2) An order under subsection (1) may modify any enactment (including this Act).

117 Orders and regulations

(1) Any power conferred by this Act on the Scottish Ministers or the Registrar General to make orders or regulations is exercisable by statutory instrument.

(2) Any power conferred by this Act on the Scottish Ministers or the Registrar General to make orders or regulations—

(a) may be exercised so as to make different provision for different purposes,

(b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate or, as the case may be, the Registrar General considers appropriate.

(3) Any power conferred by this Act on the Scottish Ministers to make orders or regulations (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.

(4) Subject to subsection (5), a statutory instrument containing an order or regulations made under this Act (other than an order under section 121) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) A statutory instrument containing—

(a) regulations under—

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(i) section 3 which includes provision amending subsection (4) or (5) of section 1,
(ii) section 38(1),
(iii) section 74(1),

(b) an order under section 116(1) which includes provision modifying an Act or an Act of the Scottish Parliament,

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

(6) In this section, "Registrar General" has the meaning given by section 57(1).

118 Meaning of "appropriate court"

(1) In this Act, "appropriate court", as respects any application made by virtue of this Act, is to be construed as follows.

(2) If the application relates to a child who is in Scotland when the application is made, the appropriate court is—

(a) the Court of Session, or
(b) the sheriff court of the sheriffdom within which the child is.

(3) If—

(a) the application is for—
(i) an adoption order, or
(ii) a permanence order seeking provision granting authority for the child to whom the order relates to be adopted, and

(b) the child is not in Scotland when the application is made,

the appropriate court is the Court of Session.

Commencement Information

I149 S. 118 in force at 28.9.2009 by 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)

119 Interpretation

(1) In this Act, unless the context otherwise requires—

"the 1995 Act" means the Children (Scotland) Act 1995 (c. 36),
"the 2002 Act" means the Adoption and Children Act 2002 (c. 38),
"the Northern Ireland Order" means the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203),
"adoption agency"—

(a) means—
(i) a local authority, or
(ii) a registered adoption service, and

(b) in sections 15, 17, 18, 20, 58 and 75 includes—
(i) an adoption agency within the meaning of section 2(1) of the 2002 Act (adoption agencies in England and Wales), and

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(ii) an adoption agency within the meaning of Article 3 of the Northern Ireland Order (adoption agencies in Northern Ireland),

"adoption order" has the meaning given by section 28(1),

"adoption society" means a body of persons whose functions consist of or include the making of arrangements for or in connection with the adoption of children,

"adoption support services" has the meaning given by section 1(5),

"applicant", in sections 16 to 19 and 34, has the meaning given by section 15(2),

"British Islands" means the United Kingdom, the Channel Islands and the Isle of Man,

"child" means a person who is under the age of 18,

"compulsory measures of supervision" has the same meaning as in Part II of the 1995 Act,

"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" means an adoption effected under the law of a Convention country outwith the British Islands and certified in pursuance of Article 23(1) of the Convention,

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

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

"guardian", in relation to a child, means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the child,

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),

"notice" means notice in writing,

"overseas adoption" has the meaning given by section 67,

"parental responsibilities" and "parental rights" have the meanings respectively given by sections 1(3) and 2(4) of the 1995 Act (analogous expressions being construed accordingly),

"permanence order" has the meaning given by section 80(2),

"registered adoption service" has the meaning given by section 2(3),

"registered adoption society" has the meaning given by section 2(2) of the 2002 Act,

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child (in each case, whether or not by affinity, and in the cases of a brother, sister, uncle or aunt, whether of the full-blood or half-blood); and includes a civil partner of any such grandparent, brother, sister, uncle or aunt,

"relevant family" has the meaning given by section 45(7); and "member", in relation to a relevant family, is to be construed accordingly,

"supervision requirement" has the meaning given by section 93(1) of the 1995 Act,

"voluntary organisation" means a body other than a public or local authority the activities of which are not carried on for profit.

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Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

(2) In this Act, unless the context otherwise requires, references to adoption are to the adoption of children, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outwith the British Islands.

(3) In this Act, references to an adoption service include references to part of such a service.

(4) In this Act, references, in relation to a child, to being looked after by a local authority are to be construed in accordance with section 17(6) of the 1995 Act.

(5) In this Act, references to a relevant couple are to be construed in accordance with section 29(3).

(6) Subject to subsection (7), for the purposes of this Act, a person is deemed to make arrangements for the adoption of a child if—

(a) the person enters into or makes any agreement or arrangement for, or for facilitating, the adoption of the child by any other person (whether the adoption is effected or intended to be effected in Great Britain or elsewhere),

(b) the person initiates or takes part in any negotiations the purpose or effect of which is the conclusion of any such agreement or the making of any such arrangement, or

(c) the person causes another person to act as mentioned in paragraph (a) or (b).

(7) The making under section 70 of the 1995 Act by a children's hearing of a supervision requirement which, in respect that it provides as to where the child is to reside, facilitates an adoption agency's placing the child for adoption does not constitute the making of such arrangements.

Commencement Information

I150 S. 119(1) in force at 7.4.2008 by S.S.I. 2008/130, art. 2, **Sch.**

I151 S. 119(2)-(7) in force at 28.9.2009 by 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)

120 Minor and consequential amendments and repeals

(1) Schedule 2 (which contains minor amendments and amendments consequential on the provisions of this Act) has effect.

(2) The enactments mentioned in the first column in schedule 3 (which include enactments that are spent) are repealed to the extent set out in the second column.

Commencement Information

I152 S. 120(1) in force at 7.4.2008 for specified purposes by S.S.I. 2008/130, art. 2, **Sch.**

I153 S. 120(1) in force at 28.9.2009 in so far as not already in force by 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)

I154 S. 120(2) in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

121 Short title and commencement

(1) This Act may be cited as the Adoption and Children (Scotland) Act 2007.

(2) The provisions of this Act (except this section and sections 116 and 117) come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may appoint different days for different purposes.

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

SCHEDULE 1

(introduced by section 53(4))

REGISTRATION OF ADOPTIONS

Registration of adoption orders

1 (1) Every adoption order must contain a direction to the Registrar General to make in the Adopted Children Register an entry in the form prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers.

(2) For the purposes of compliance with the requirements of sub-paragraph (1)—

(a) where the precise date of the child's birth is not proved to the satisfaction of the court—

(i) the court is to determine the probable date of the child's birth, and

(ii) the date so determined is to be specified in the adoption order as the date of the child's birth,

(b) where the country of birth of the child is not proved to the satisfaction of the court—

(i) if it appears probable that the child was born in a part of the British Islands, the child is to be treated as having been born in Scotland,

(ii) in any other case, the particulars of the country of birth may be omitted from the adoption order and from the entry in the Adopted Children Register,

(c) where—

(i) the application for the adoption order specifies a name (or names) and surname as being those of the child, that name (or those names) and surname are to be recorded in the adoption order as the name (or names) and surname of the child,

(ii) no name (or names) or surname is so specified, the original name (or names) of the child and the surname of the applicant are to be recorded in the adoption order as the name (or names) and surname of the child.

Modifications etc. (not altering text)

C19 Sch. 1 paras. 1-4 applied in part (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(5)**

Commencement Information

I155 Sch. 1 para. 1(1) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I156 Sch. 1 para. 1(1) in force at 28.9.2009 in so far as not already in force by 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)

I157 Sch. 1 para. 1(2) in force at 28.9.2009 by 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)

2 (1) Sub-paragraph (2) applies where—

(a) on an application to the appropriate court for an adoption order in respect of a child, the identity of the child with a child to whom an entry in the register of births relates is proved to the satisfaction of the court, and

(b) the child has not previously been the subject of an adoption order made by a court in Scotland under this Act or any enactment at the time in force.

(2) Any adoption order made in pursuance of the application must contain a direction to the Registrar General to secure that the entry in the register of births is marked with the word "Adopted".

Modifications etc. (not altering text)

C19 Sch. 1 paras. 1-4 applied in part (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(5)**

Commencement Information

I158 Sch. 1 para. 2 in force at 28.9.2009 by 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)

3 Where an adoption order is made in respect of a child who has previously been the subject of an adoption order made by a court in Scotland under this Act or any enactment at the time in force, the order must contain a direction to the Registrar General to secure that the previous entry in the Adopted Children Register is marked with the word "Re-adopted".

Modifications etc. (not altering text)

C19 Sch. 1 paras. 1-4 applied in part (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(5)**

Commencement Information

I159 Sch. 1 para. 3 in force at 28.9.2009 by 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)

4 (1) Where an adoption order is made, the clerk of the court which made the order must secure that the order is communicated to the Registrar General.

(2) As soon as is reasonably practicable after receipt of the communication, the Registrar General must secure that the direction contained in the order is complied with.

Modifications etc. (not altering text)

C19 Sch. 1 paras. 1-4 applied in part (with modifications) (28.9.2009) by Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), regs. 1(1), **9(5)**

Commencement Information

I160 Sch. 1 para. 4 in force at 28.9.2009 by 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)

Registration of adoptions in other parts of the British Islands

5 (1) Sub-paragraphs (2) and (3) apply where the Registrar General is notified by the authority maintaining a register of adoptions in a part of the British Islands outwith Scotland that an order has been made in that part authorising the adoption of a child.

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(2) If an entry in the register of births (and no entry in the Adopted Children Register) relates to the child, the Registrar General must secure that the entry is marked with the word "Adopted" followed by the name, in brackets, of the part of the British Islands in which the order was made.

(3) If an entry in the Adopted Children Register relates to the child, the Registrar General must mark the entry with the word "Re-adopted" followed by the name, in brackets, of the part of the British Islands in which the order was made.

(4) Where, after an entry in either of the registers mentioned in sub-paragraphs (2) and (3) has been so marked, the Registrar General is notified by the authority concerned that—

(a) the order has been quashed,

(b) an appeal against the order has been allowed, or

(c) the order has been revoked,

the Registrar General must secure that the marking is cancelled.

(5) Where the marking of an entry in a register is cancelled under sub-paragraph (4), an extract of the entry is not to be treated as accurate unless both the marking and the cancellation are omitted from it.

(6) This paragraph applies in relation to orders corresponding to orders under section 59 as it applies in relation to orders authorising the adoption of a child except that any marking of an entry required by virtue of this sub-paragraph is to consist of the words "proposed foreign adoption" or, as the case may require, "proposed foreign re-adoption" followed by the name, in brackets, of the part of the British Islands in which the order was made.

Commencement Information

I161 Sch. 1 para. 5 in force at 28.9.2009 by 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)

Registration of other adoptions

6 (1) If the Registrar General is satisfied, on an application under this paragraph, that the Registrar General has sufficient particulars relating to a child adopted under a registrable foreign adoption to enable an entry to be made in the Adopted Children Register for the child, the Registrar General must make the entry accordingly.

(2) If the Registrar General is also satisfied that an entry in the register of births relates to the child, the Registrar General must secure that the entry in that register is marked "Adopted" or "Re-adopted", as the case may be, followed by the name, in brackets, of the country in which the adoption was effected.

(3) An application under this paragraph must be made in the prescribed manner by a prescribed person and the applicant must provide the prescribed particulars.

(4) An entry made in the Adopted Children Register by virtue of this paragraph must be made in the prescribed form.

(5) In this paragraph—

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

"prescribed" means prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers,

"registrable foreign adoption" means an adoption which satisfies prescribed requirements and which is—

(a) a Convention adoption, or

(b) an overseas adoption.

Commencement Information

I162 Sch. 1 para. 6(1)(2) in force at 28.9.2009 by 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)

I163 Sch. 1 para. 6(3)-(5) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I164 Sch. 1 para. 6(3)-(5) in force at 28.9.2009 in so far as not already in force by 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)

Amendment of orders and rectification of registers

7 (1) The court by which an adoption order has been made may, on the application of the adopter or the adopted person, amend the order by the correction of any error in the particulars contained in it.

(2) The court by which an adoption order has been made may, if satisfied on the application of the adopter or the adopted person that before the expiry of the period of one year beginning with the date of the order any new name—

(a) has been given to the adopted person (whether in baptism or otherwise), or

(b) has been taken by the adopted person,

in place of or in addition to a name specified in the particulars required to be entered in the Adopted Children Register in pursuance of the order, amend the order by substituting or, as the case may be, adding that name in those particulars.

(3) The court by which an adoption order has been made may, if satisfied on the application of any person concerned that a direction for the marking of an entry in the register of births or the Adopted Children Register included in the order in pursuance of paragraph 2 or 3 was wrongly so included, revoke that direction.

(4) Where an adoption order is amended or a direction revoked under sub-paragraphs (1) to (3), the clerk of the court must secure that the amendment is communicated in the prescribed manner to the Registrar General.

(5) As soon as is reasonably practicable after receipt of the communication, the Registrar General must secure that—

(a) the entry in the Adopted Children Register is amended accordingly, or

(b) the marking of the entry in the register of births or the Adopted Children Register is cancelled,

as the case may be.

(6) Where an adoption order is quashed or an appeal against an adoption order allowed by any court, the court must give directions to the Registrar General to secure that—

(a) any entry in the Adopted Children Register, and

(b) any marking of an entry in that register or, as the case may be, the register of births,

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Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

which was effected in pursuance of the order is cancelled.

(7) Where an adoption order has been amended, any extract of the relevant entry in the Adopted Children Register which may be issued in pursuance of section 54 must be a copy of the entry as amended, without the reproduction of—
  (a) any note or marking relating to the amendment, or
  (b) any matter cancelled in pursuance of it.

(8) Where the marking of an entry is cancelled, an extract of the entry is not to be treated as accurate unless both the marking and the cancellation are omitted from it.

(9) If the Registrar General is satisfied—
  (a) that a registrable foreign adoption (as defined in sub-paragraph (5) of paragraph 6) has ceased to have effect (whether on annulment or otherwise), or
  (b) that any entry or mark was erroneously made in pursuance of that paragraph in the Adopted Children Register or the register of births,

the Registrar General may secure that such alterations are made in those registers as the Registrar General considers are required in consequence of the adoption ceasing to have effect or to correct the error.

(10) Where an entry in such a register is amended in pursuance of sub-paragraph (9), an extract of the entry is not to be treated as accurate unless it shows the entry as amended but without indicating that it has been amended.

(11) In this paragraph, "prescribed" means prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers.

Commencement Information

I165 Sch. 1 para. 7(1)-(3)(5)-(10) in force at 28.9.2009 by 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**)

I166 Sch. 1 para. 7(4)(11) in force at 20.4.2009 for specified purposes by S.S.I. 2009/147, art. 2, **Sch.**

I167 Sch. 1 para. 7(4)(11) in force at 28.9.2009 in so far as not already in force by 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)

Marking of entries on re-registration of birth

8 Without prejudice to any other provision of this Act, where—
  (a) an entry in the register of births has been marked in accordance with paragraph 5 or 6, and
  (b) the birth is re-registered under section 20(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49),

the entry made on re-registration must be marked in the same way.

Commencement Information

I168 Sch. 1 para. 8 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

SCHEDULE 2

(introduced by section 120(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

Succession (Scotland) Act 1964 (c. 41)

1 (1) The Succession (Scotland) Act 1964 is amended as follows.

(2) In section 23 (treatment of adopted person for purposes of succession etc.)—

(a) in subsection (3), after "1978" insert " or in the Adoption and Children (Scotland) Act 2007 (asp 4) ", and

(b) in subsection (5)—

(i) the words from "has" to "this Act)" become paragraph (a) of that subsection, and

(ii) after that paragraph, insert "; and

(b) includes an adoption order within the meaning of section 28(1) of the Adoption and Children (Scotland) Act 2007 (asp 4);".

(3) In subsection (1) of section 37 (exclusion of certain matters from operation of Act), after "1978" insert " or the Adoption and Children (Scotland) Act 2007 (asp 4) ".

Commencement Information

I169 Sch. 2 para. 1 in force at 28.9.2009 by 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)

Social Work (Scotland) Act 1968 (c. 49)

2 (1) The Social Work (Scotland) Act 1968 is amended as follows.

(2) In section 5 (powers of Scottish Ministers)—

(a) in subsection (1B), after paragraph (p) insert—

"(q) the Adoption and Children (Scotland) Act 2007 (asp 4).",

(b) in subsection (2)(c), for "and (p)" substitute " , (p) and (q) ", and

(c) in subsection (5), for the words from "has" to the end of the subsection substitute " means a person who is under the age of 18. ".

(3) In subsection (1)(b) of section 6A (inquiries), for "section 65 of the Adoption (Scotland) Act 1978" substitute " section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

(4) In subsection (3A) of section 10 (assistance to voluntary organisations etc. for social work), after "adoption" insert " support ".

Commencement Information

I170 Sch. 2 para. 2 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Foster Children (Scotland) Act 1984 (c. 56)

3 In subsection (5)(a) of section 2 of the Foster Children (Scotland) Act 1984 (exceptions to section 1), for "section 1 of the Adoption (Scotland) Act 1978" substitute " section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

Commencement Information

I171 Sch. 2 para. 3 in force at 28.9.2009 by 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)

Child Abduction and Custody Act 1985 (c. 60)

4 In paragraph 5 of Schedule 3 to the Child Abduction and Custody Act 1985 (custody orders), after sub-paragraph (vi), insert—

"(vii) an adoption order (as defined in section 28(1) of the Adoption and Children (Scotland) Act 2007 (asp 4);

(viii) a permanence order (as defined in subsection (2) of section 80 of that Act) which includes provision such as is mentioned in paragraph (c) of that subsection.".

Commencement Information

I172 Sch. 2 para. 4 in force at 28.9.2009 by 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)

Family Law Act 1986 (c. 55)

5 In subsection (1)(b) of section 1 of the Family Law Act 1986 (orders to which Part 1 applies), after sub-paragraph (ix), insert—

"(x) an adoption order (as defined in section 28(1) of the Adoption and Children (Scotland) Act 2007 (asp 4);

(xi) a permanence order (as defined in subsection (2) of section 80 of that Act) which includes provision such as is mentioned in paragraph (c) of that subsection".

Commencement Information

I173 Sch. 2 para. 5 in force at 28.9.2009 by 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)

Human Fertilisation and Embryology Act 1990 (c. 37)

6 In subsection (10) of section 30 of the Human Fertilisation and Embryology Act 1990 (parental orders in favour of gamete donors), after "1987" add " and the Adoption and Children (Scotland) Act 2007 (asp 4) ".

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Commencement Information

I174 Sch. 2 para. 6 in force at 28.9.2009 by 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)

Child Support Act 1991 (c. 48)

7 In subsection (3) of section 26 of the Child Support Act 1991 (disputes about parentage), after "1978" insert " or Chapter 3 of Part 1 of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

Commencement Information

I175 Sch. 2 para. 7 in force at 28.9.2009 by 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)

Civil Evidence (Family Mediation) (Scotland) Act 1995 (c. 6)

8 In sub-paragraph (iii) of section 2(1)(d) of the Civil Evidence (Family Mediation) (Scotland) Act 1995 (exceptions to general rule of inadmissibility), for the words from "an" to the end of the sub-paragraph substitute " the making of an adoption order (as defined in section 29(1) of the Adoption and Children (Scotland) Act 2007 (asp 4)) ".

Commencement Information

I176 Sch. 2 para. 8 in force at 28.9.2009 by 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)

Children (Scotland) Act 1995 (c. 36)

9 (1) The Children (Scotland) Act 1995 is amended as follows.

(2) In section 11 (court orders relating to parental responsibilities etc.)—

(a) in subsection (4)—

(i) for "(3)(a)(iii)" substitute " (3)(ab) ", and

(ii) after paragraph (a) insert " or ",

(b) in subsection (5), after "(3)(a)" insert " and (ab) ", and

(c) in subsection (6), for the words from "have" to the end substitute " has the meaning given by section 119 of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

(3) In subsection (1) of section 15 (interpretation of Part 1), in the definition of "parent", after "30" insert " and Chapter 3 of Part 1 of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

(4) In subsection (6) of section 17 (duty of local authority to child looked after by authority)—

(a) the word "or" after paragraph (c) is repealed, and

(b) after paragraph (d) add "; or

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(e) in respect of whom a permanence order has, on an application by them under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4), been made and has not ceased to have effect.”.

(5) In section 44 (prohibition of publication of proceedings at children's hearing), at end insert—

“(6) The requirements of subsection (1) do not apply in relation to the publication by or on behalf of a local authority or an adoption agency (within the meaning of the Adoption and Children (Scotland) Act 2007 (asp 4)) of information about a child for the purposes of making arrangements in relation to the child under this Act or that Act.”.

(6) In subsection (2) of section 54 (reference to the Principal Reporter by court)—

(a) in paragraph (c), for the words from “Adoption” to the end of the paragraph, substitute “ Adoption and Children (Scotland) Act 2007 (asp 4) ”, and

(b) after that paragraph, insert—

“(ca) proceedings for the making, variation or revocation of a permanence order under that Act in respect of a child who is not subject to a supervision requirement;”.

(7) In section 73 (duration and review of supervision requirement)—

(a) in subsection (4), in paragraph (c), for the words from “applying” in sub-paragraph (i) to the end of that paragraph substitute—

“(i) applying under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (“the 2007 Act”) for a permanence order;

(ii) applying under section 92 of the 2007 Act for variation of such an order;

(iii) applying under section 93 of the 2007 Act for amendment of such an order;

(iv) applying under section 98 of the 2007 Act for revocation of such an order; or

(v) placing the child for adoption,

and they intend to make any such application or to place the child for adoption. ”,

(b) after that subsection insert—

“(4A) The Scottish Ministers may make regulations specifying by reference to the occurrence of an event or events described in the regulations the period of time during which a referral under subsection (4)(c) is to be made.”,

(c) in subsection (5), for “section 12 of the said Act of 1978” substitute “ section 29 or 30 of the 2007 Act ”,

(d) in subsection (8), in paragraph (a), after sub-paragraph (iv) insert—

“(iva) the case has been referred to him under section 96(3) or 106 of the Adoption and Children (Scotland) Act 2007 (asp 4),”,

(e) in subsection (13)—

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(i) for the words from "section", where it first occurs, to "1978" substitute " section 80 of the 2007 Act ", and

(ii) for "section 12" substitute " section 29 or 30 ",

(f) after subsection (13) insert—

"(13A) A report drawn up under subsection (13) shall be in such form as may be prescribed by the Scottish Ministers.", and

(g) in subsection (14), for the words from "section", where it first occurs, to "1978", substitute " section 29, 30 or 80 of the 2007 Act ".

(8) In subsection (2) of section 93 (interpretation of Part 2), after paragraph (b) of the definition of "relevant person" insert—

"(ba) any person in whom parental responsibilities or parental rights are vested by, under or by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4));".

(9) In paragraph (a) of subsection (1) of section 101 (panel for curators *ad litem*, reporting officers and safeguarders), for "under section 58 of the Adoption (Scotland) Act 1978" substitute " by virtue of section 108 of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

(10) In paragraph 4 of Schedule 3 (transitional provisions and savings), for sub-paragraph (e) substitute—

"(e) the making of an adoption order (as defined in section 28(1) of the Adoption and Children (Scotland) Act 2007 (asp 4)) in respect of the child;

(f) the making of a permanence order (as defined in subsection (2) of section 80 of that Act) which includes provision such as is mentioned in paragraph (c) of that subsection in respect of the child.".

Commencement Information

I177 Sch. 2 para. 9(1)(5) in force at 7.4.2008 by S.S.I. 2008/130, art. 2, **Sch.**

I178 Sch. 2 para. 9(2)-(4)(6)-(10) in force at 28.9.2009 by 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**)

Adoption (Intercountry Aspects) Act 1999 (c. 18)

10 In section 1 of the Adoption (Intercountry Aspects) Act 1999 (regulations giving effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption), after subsection (6) add—

"(7) References in this section to enactments include references to Acts of the Scottish Parliament.".

Commencement Information

I179 Sch. 2 para. 10 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
Changes to legislation: *Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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)*

Regulation of Care (Scotland) Act 2001 (asp 8)

11 (1) The Regulation of Care (Scotland) Act 2001 is amended as follows.

(2) In paragraph (a) of subsection (3) of section 21 (offences in relation to registration under Part 1), for "section 11 of the Adoption (Scotland) Act 1978 (c. 28)" substitute " section 75(1), (3) or (4) of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

(3) In paragraph (b) of subsection (6) of section 25 (inspections), at the end of the paragraph add " or section 8 or 37 of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

(4) In subsection (1) of section 77 (interpretation), in paragraph (a) of the definition of "child", for "in section 65(1) of the Adoption (Scotland) Act 1978 (c. 28)" substitute " by section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

Commencement Information

I180 Sch. 2 para. 11 in force at 28.9.2009 by 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)

Adoption and Children Act 2002 (c. 38)

12 In paragraph (a) of subsection (3) of section 123 of the Adoption and Children Act 2002 (restriction on advertisements etc.), after "(N.I. 22)" insert " or section 60 or 75 of the Adoption and Children (Scotland) Act 2007 (asp 4) ".

Commencement Information

I181 Sch. 2 para. 12 in force at 28.9.2009 by 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)

Income Tax (Trading and Other Income) Act 2005 (c. 5)

13 In section 745 of the Income Tax (Trading and Other Income) Act 2005—

(a) in paragraph (a), for the words from "or", where it first occurs, to "court)" substitute " which is an excepted payment by virtue of paragraph (a) or (c) of subsection (2) of section 73 of the Adoption and Children (Scotland) Act 2007 (asp 4), ",

(b) in paragraph (b), for the words from "under" to the end of the paragraph, substitute " which are excepted payments by virtue of paragraph (b) of that subsection, ", and

(c) in paragraph (d), for "section 51A" substitute " section 71 ".

Commencement Information

I182 Sch. 2 para. 13 in force at 28.9.2009 by 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)

Status: *Point in time view as at 01/10/2009.*
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Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3)

14 In subsection (2) of section 7 of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 (interpretation), after paragraph (p) add—

"(q) the Adoption and Children (Scotland) Act 2007 (asp 4);".

Commencement Information

I183 Sch. 2 para. 14 in force at 28.9.2009 by 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)

SCHEDULE 3

(introduced by section 120(2))

REPEALS

Commencement Information

I184 Sch. 3 in force at 28.9.2009 by 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)

Enactment	***Extent of repeal***
Social Work (Scotland) Act 1968 (c. 49)	In section 5(1B), paragraph (i) and the word "and" after paragraph (o).
Children Act 1975 (c. 72)	In section 107(1), the definition of "adoption society".
Adoption (Scotland) Act 1978 (c. 28)	The whole Act except Part IV.
Health and Social Services and Social Security Adjudications Act 1983 (c. 41)	In Schedule 2, paragraphs 38 to 45.
Foster Children (Scotland) Act 1984 (c. 56)	In section 2(5)(a), the words "and possession". In Schedule 2, paragraphs 6 and 7.
Child Abduction and Custody Act 1985 (c. 60)	In Schedule 3, paragraph 5(ii) and (iia).
Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)	Sections 27 and 28.
Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9)	In Schedule 1, paragraph 18.
Incest and Related Offences (Scotland) Act 1986 (c. 36)	In Schedule 1, paragraph 5.
Family Law Act 1986 (c. 55)	Section 1(1)(b)(ii) and (iii). In Schedule 1, paragraph 31.

Status: *Point in time view as at 01/10/2009.*
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Children Act 1989 (c. 41)	Section 88(2). In Schedule 10, Part 2.
Human Fertilisation and Embryology Act 1990 (c. 37)	In section 30(10), the word “and”. In Schedule 4, paragraph 6.
Age of Legal Capacity (Scotland) Act 1991 (c. 50)	In subsection (3) of section 2, the words from “; and accordingly” to the end of the subsection. In Schedule 1, paragraph 36.
Local Government etc. (Scotland) Act 1994 (c. 39)	In Schedule 13, paragraph 111.
Civil Evidence (Family Mediation) (Scotland) Act 1995 (c. 6)	Section 2(1)(d)(iv).
Children (Scotland) Act 1995 (c. 36)	In section 11, in subsection (4), paragraphs (b) and (d) and the word “or” immediately preceding paragraph (d); and, in subsection (6), the words “ “adoption agency” and”. In section 16(4)(b)(i), the words “a parental responsibilities order,”. In section 26(1)(a), the words from “on” to “determine”. Sections 86 to 89. In section 93(1), the definition of parental responsibilities order. Sections 94 to 98. Schedule 2.
Adoption (Intercountry Aspects) Act 1999 (c. 18)	Sections 3, 5, 6, 8, 9, 11 to 13 and 18(2). In Schedule 2, paragraphs 2(a) and 4.
Care Standards Act 2000 (c. 14)	In Schedule 4, paragraph 6.
Regulation of Care (Scotland) Act 2001 (asp 8)	Section 21(3)(b) and the word “or” immediately preceding it. In section 25(6)(b), the words “section 9 of the Adoption (Scotland) Act 1978 (c. 28) or”. In schedule 3, paragraph 7.
Adoption and Children Act 2002 (c. 38)	In section 123(3), the words “section 11 or 50 of the Adoption (Scotland) Act 1978 (c. 28) or”. Sections 132 to 134. In Schedule 3, paragraphs 21 to 35 and 84.
Human Fertilisation and Embryology (Deceased Fathers) Act 2003 (c. 24)	In the Schedule, paragraph 11.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	Section 745(c).
Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3)	Section 7(2)(h).

Status:
Point in time view as at 01/10/2009.

Changes to legislation:
Adoption and Children (Scotland) Act 2007 is up to date with all changes known to be in force on or before 08 July 2024. 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.