

# Adoption and Children (Scotland) Act 2007

2007 asp 4

## PART 1

### ADOPTION

#### CHAPTER 2

##### THE ADOPTION PROCESS

###### *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.

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

- C1** 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)**
- C2** 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)**
- C3** S. 28 applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, **Sch. 3**

#### Commencement Information

- I1** 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—
- each member of a relevant couple is aged 21 or over,
  - neither member of the couple is a parent of the child to be adopted, and
  - 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—
- that a member of the couple is domiciled in a part of the British Islands,
  - 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—
- persons who are married to each other,
  - persons who are civil partners of each other,
  - persons who are living together as if husband and wife in an enduring family relationship, or
  - 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)

- C4** 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

- I2** 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—

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- (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,
  - (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,
  - [<sup>F1</sup>(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.

[<sup>F2</sup>(7A) The provisions referred to in subsection (7)(c) are—

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- (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).

#### 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)

- C5** 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

- I3** 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.

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- (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.
- (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

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- (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

- I4** 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

- I5** 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—
- in refusing the previous application, the court directed that this section should not apply, or
  - 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—
- an adoption order,
  - an adoption order as defined in section 46(1) of the 2002 Act,
  - an order made, or having effect as if made, under Article 12 of the Northern Ireland Order,
  - an order for adoption made in the Isle of Man,
  - an order for adoption made in any of the Channel Islands.

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

- C6** S. 33(1)(2) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, [Sch. 3](#)

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**Commencement Information**

- I6** 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.

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

- C7** 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**

- I7** 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)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 14(3A) inserted by [2020 asp 16 s. 30\(5\)](#)
- s. 14(4A)-(4C) inserted by [2020 asp 16 s. 2\(2\)\(c\)](#)
- s. 84(5A)(5B) inserted by [2020 asp 16 s. 2\(3\)\(c\)](#)