



# Adoption and Children (Scotland) Act 2007

2007 asp 4

## PART 1

### ADOPTION

## CHAPTER 2

### THE ADOPTION PROCESS

#### **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)**

#### *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),

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- (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)

- C2** 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)**
- C3** S. 14(1)-(4) 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**
- C4** S. 14(8) 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

- II** 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—
- (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

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- (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.

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

**C5** 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)**

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**Commencement Information**

**I2** 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—
  - (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.

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**Commencement Information**

**I3** 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)

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## 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

- I4** 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

- I5** 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—
  - (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

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- (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

- I6** 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—
- an adoption agency has placed a child for adoption with persons (“prospective adopters”), and
  - 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—
- the adoption agency, or
  - 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

- I7** S. 20(1) in force at 20.4.2009 for specified purposes by [S.S.I. 2009/147](#), [art. 2](#), [Sch.](#)
- I8** 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)
- I9** 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)

## **21 Restrictions on removal: notice of intention to adopt given**

- (1) Subsection (2) applies where—
- persons (“prospective adopters”) give notice under section 18(2) in relation to a child, and
  - during the period of 5 years immediately preceding the giving of notice, the child's home has been with the prospective adopters.

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- (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)**

- C6** 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)**
- C7** 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**

- I10** 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)

## **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”).

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- (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)

- C8** 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)**
- C9** S. 22 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

- I11** 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, <sup>F1</sup>...
  - (c) the removal is authorised by virtue of Chapter <sup>F2</sup>... 3 of Part II of the 1995 Act [<sup>F3</sup>or
  - (d) the removal is authorised by an order or warrant under the Children's Hearings (Scotland) Act 2011 (asp 1) . ]

#### Textual Amendments

- F1** Word in s. 23(3) repealed (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(2)(a)**
- F2** Words in s. 23(3)(c) repealed (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(2)(b)**

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**F3** S. 23(3)(d) and preceding word inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(2)(c)**

#### Commencement Information

**I12** 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)

### *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)**

**C11** S. 24 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

**I13** 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



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- (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.
- (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.

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

**C12** 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)**

**C13** 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)**

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**Commencement Information**

**I14** 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)

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*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,
  - (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.

<sup>F4</sup>(10) .....

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#### Textual Amendments

- F4** S. 26(10) repealed (27.1.2010) by [Adoption and Children \(Scotland\) Act 2007 \(Modification of Enactments\) Order 2010 \(S.S.I. 2010/21\)](#), art. 1, **Sch. para. 8(3)**

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

- C14** 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

- I15** 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)

### *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—
- section 30(1), (2) and (3) (removal of child placed or who may be placed for adoption),
  - sections 32(2)(b), 33(2) and 35(2) (return of child by prospective adopters),
  - section 34(1) (removal of child in contravention of placement order),
  - section 36(1) (removal of child in non-agency case), and
  - section 36(5) (return of child to parent or guardian).

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

- C15** S. 27(1) 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

- I16** 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.

*Changes to legislation: Adoption and Children (Scotland) Act 2007, Chapter 2 is up to date with all changes known to be in force on or before 19 August 2021. 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) View outstanding changes*

- (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)

- C16** 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)**
- C17** 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

- I17** 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.

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

**C18** 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

**I18** 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,
  - (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,

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- (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>F5</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>F6</sup>(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).

#### Textual Amendments

- F5** 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.)
- F6** 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)

- C19** 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

- I19** 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,

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- (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.
- (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.

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- (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.

#### Commencement Information

**I20** 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

**I21** 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,



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

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

**C20** 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**

**Commencement Information**

**I22** 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)**

**C21** 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**

**I23** 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,

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- (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.

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

**C22** S. 35 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

**I24** 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)

### *Revocation of supervision requirement*

## 36 **[<sup>F7</sup>Revocation of compulsory supervision order on making of adoption order]**

- (1) Subsection (2) applies where—
  - (a) the child to be adopted is subject to a [<sup>F8</sup>compulsory supervision order], and
  - (b) the appropriate court is satisfied that, were it to make an adoption order in relation to the child, [<sup>F9</sup>it would no longer be necessary that, for the protection, guidance, treatment or control of the child, the child be subject to the compulsory supervision order.]
- (2) The court must make an order providing that, on the making of the adoption order, the [<sup>F10</sup>compulsory supervision order] ceases to have effect.

#### Textual Amendments

**F7** S. 36 title substituted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(3)**

**F8** Words in s. 36(1)(a) substituted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(3)(a)(i)**

**F9** Words in s. 36(1)(b) substituted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(3)(a)(ii)**

**F10** Words in s. 36(2) substituted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(3)(b)**

#### Commencement Information

**I25** 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)

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## 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

- I26** S. 37 in force at 20.4.2009 for specified purposes by [S.S.I. 2009/147](#), [art. 2](#), [Sch.](#)
- I27** 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—
    - (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

- I28** S. 38 in force at 20.4.2009 for specified purposes by [S.S.I. 2009/147](#), [art. 2](#), [Sch.](#)
- I29** 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](#))

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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\(3\)\(c\)](#)