



# Adoption and Children (Scotland) Act 2007

2007 asp 4

## PART 1

### ADOPTION

#### 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.
- (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

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- (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.

## **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.

## **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,
  - (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

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- (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.

## **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
  - (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.

### *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

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- (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.
- (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.

## **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.

## **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).

**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.

*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—
  - (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.

*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.

**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.

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- (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.

## **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.

## **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.