



Adoption and Children (Scotland) Act 2007

2007 asp 4

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 - (b) every person who has consented to the making of the order under section 20 of the 2002 Act (and has not withdrawn the consent) unless the person has given a notice under subsection (4)(a) of that section which has effect,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).

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.
- (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.

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—
 - (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.

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—

Status: This is the original version (as it was originally enacted).

- (i) an adoption agency within the meaning of section 2(1) of the 2002 Act (adoption agencies in England and Wales), and
 - (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.

- (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.

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.

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.