



Children Act 1975

1975 CHAPTER 72

PART I

ADOPTION

Adoption orders

8 Adoption orders

- (1) An adoption order is an order vesting the parental rights and duties relating to a child in the adopters, made on their application by an authorised court.
- (2) The order does not affect the parental rights and duties so far as they relate to any period before the making of the order.
- (3) The making of the order operates to extinguish—
 - (a) any parental right or duty relating to the child which—
 - (i) is vested in a person (not being one of the adopters) who was the parent or guardian of the child immediately before the making of the order, or
 - (ii) is vested in any other person by virtue of the order of any court; and
 - (b) any duty arising by virtue of an agreement or the order of a court to make payments, so far as the payments are in respect of the child's maintenance for any period after the making of the order or any other matter comprised in the parental duties and relating to such a period.
- (4) Subsection (3)(b) does not apply to a duty arising by virtue of an 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.
- (5) An adoption order may not be made in relation to a child who is or has been married.

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- (6) An adoption order shall not be made in Scotland in relation to a child who is a minor unless with the consent of the minor; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.
- (7) An adoption order may contain such terms and conditions as the court thinks fit.
- (8) An adoption order may be made notwithstanding that the child is an adopted child.
- (9) Schedule 1 contains for England and Wales further provisions about the effect of adoption and related or comparable provisions about legitimation.
- (10) Schedule 2 has effect as respects the status conferred in Scotland by adoption and related matters.

9 Child to live with adopters before order made

- (1) Where—
 - (a) the applicant, or one of the applicants, is a parent, stepparent or relative of the child, or
 - (b) the child was placed with the applicants by an adoption agency or in pursuance of an order of the High Court,

an adoption order shall not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the applicants or one of them.
- (2) Where subsection (1) does not apply, an adoption order shall not be made unless the child is at least twelve months old and at all times during the preceding twelve months had his home with the applicants or one of them.
- (3) An adoption order shall not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a married couple, both applicants together in the home environment have been afforded—
 - (a) where the child was placed with the applicant by an adoption agency, to that agency, or
 - (b) in any other case, to the local authority within whose area the home is.

10 Adoption by married couple

- (1) Subject to sections 37(1) and 53(1), an adoption order may be made on the application of a married couple where each has attained the age of 21 but an adoption order shall not otherwise be made on the application of more than one person.
- (2) An adoption order shall not be made on the application of a married couple unless—
 - (a) at least one of them is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
 - (b) the application is for a Convention adoption order and section 24 is complied with.
- (3) Where the application is made to a court in England or Wales and the married couple consist of a parent and step-parent of the child, the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the Matrimonial Causes Act 1973.

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11 Adoption by one person

- (1) Subject to sections 37(1) and 53(1), an adoption order may be made on the application of one person where he has attained the age of 21 and—
 - (a) is not married, or
 - (b) is married and the court is satisfied that—
 - (i) his spouse cannot be found, or
 - (ii) the spouses have separated and are living apart, and the separation is likely to be permanent, or
 - (iii) his spouse is by reason of ill health, whether physical or mental, incapable of making an application for an adoption order.
- (2) An adoption order shall not be made on the application of one person unless—
 - (a) he is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
 - (b) the application is for a Convention adoption order and section 24 is complied with.
- (3) An adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that—
 - (a) the other natural parent is dead or cannot be found, or
 - (b) there is some other reason justifying the exclusion of the other natural parent, and where such an order is made the reason justifying the exclusion of the other natural parent shall be recorded by the court.
- (4) Where the application is made to a court in England or Wales and the applicant is a step-parent of the child the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the Matrimonial Causes Act 1973.

12 Parental agreement

- (1) An adoption order shall not be made unless—
 - (a) the child is free for adoption; or
 - (b) in the case of each parent or guardian of the child the court is satisfied that—
 - (i) he freely, and with full understanding of what is involved, agrees unconditionally to the making of the adoption order (whether or not he knows the identity of the applicants), or
 - (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in subsection (2).
- (2) The grounds mentioned in subsection (1)(b)(ii) are that the parent or guardian—
 - (a) cannot be found or is incapable of giving agreement;
 - (b) is withholding his agreement unreasonably ;
 - (c) has persistently failed, without reasonable cause to discharge the parental duties in relation to the child;
 - (d) has abandoned or neglected the child ;
 - (e) has persistently ill-treated the child ;
 - (f) has seriously ill-treated the child (subject to subsection (5)).

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- (3) Subsection (1) does not apply in any case where the child is not a United Kingdom national and the application for the adoption order is for a Convention adoption order.
- (4) Agreement is ineffective for the purposes of subsection (1)(b)(i) if given by the mother less than six weeks after the child's birth.
- (5) Subsection (2)(f) does not apply unless (because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of the parent or guardian is unlikely.
- (6) A child is free for adoption if he is the subject of an order under section 14 and the order has not been revoked under section 16.

13 Religious upbringing of adopted child

An adoption agency shall in placing a child for adoption have regard (so far as is practicable) to any wishes of the child's parents and guardians as to the religious upbringing of the child.

14 Freeing child for adoption

- (1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of the child that—
 - (a) he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or
 - (b) his agreement to the making of an adoption order should be dispensed with on a ground specified in section 12(2),the court shall, subject to subsection (5), make an order declaring the child free for adoption.
- (2) No application shall be made under subsection (1) unless—
 - (a) it is made with the consent of a parent or guardian of the child, or
 - (b) the adoption agency is applying for dispensation under subsection (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the adoption agency.
- (3) No agreement required under subsection (1)(a) shall be dispensed with under subsection (1)(b) unless the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.
- (4) An agreement by the mother of the child is ineffective for the purposes of this section if given less than six weeks after the child's birth.
- (5) An order under this section shall not be made in Scotland in relation to a child who is a minor unless with the consent of the child ; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.
- (6) On the making of an order under this section, the parental rights and duties relating to the child vest in the adoption agency, and subsections (2) and (3) of section 8 apply as if the order were an adoption order and the agency were the adopters.
- (7) Before making an order under this section the court shall satisfy itself that each parent or guardian who can be found has been given an opportunity of making, if he so wishes,

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a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.

- (8) Before making an order under this section in the case of an illegitimate child whose father is not its guardian, the court shall satisfy itself in relation to any person claiming to be the father that either—
- (a) he has no intention of applying for custody of the child under section 9 of the Guardianship of Minors Act 1971 or under section 2 of the Illegitimate Children (Scotland) Act 1930, or
 - (b) if he did apply for custody under either of those sections the application would be likely to be refused.

15 Progress reports to former parent

- (1) This section and section 16 apply to any person ("the former parent") who was required to be given an opportunity of making a declaration under section 14(7) but did not do so.
- (2) Within the 14 days following the date twelve months after the making of the order under section 14, the adoption agency in which the parental rights and duties were vested on the making of the order, unless it has previously by notice to the former parent informed him that an adoption order has been made in respect of the child, shall by notice to the former parent inform him—
- (a) whether an adoption order has been made in respect of the child, and, (if not)
 - (b) whether the child has his home with a person with whom he has been placed for adoption.
- (3) If at the time when the former parent is given notice under subsection (2) an adoption order has not been made in respect of the child, it is thereafter the duty of the adoption agency to give notice to the former parent of the making of an adoption order (if and when made), and meanwhile to give the former parent notice whenever the child is placed for adoption or ceases to have his home with a person with whom he has been placed for adoption.
- (4) If at any time the former parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—
- (a) the agency shall secure that the declaration is recorded by the court which made the order under section 14, and
 - (b) the agency is released from the duty of complying further with subsection (3) as respects that former parent.

16 Revocation of section 14 order

- (1) The former parent, at any time more than twelve months after the making of the order under section 14 when—
- (a) no adoption order has been made in respect of the child, and
 - (b) the child does not have his home with a person with whom he has been placed for adoption,
- may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume the parental rights and duties.

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- (2) While the application is pending the adoption agency having the parental rights and duties shall not place the child for adoption without the leave of the court.
- (3) Where an order freeing a child for adoption is revoked under this section—
 - (a) the parental rights and duties relating to the child are vested in the individual or, as the case may be, the individuals in whom they vested immediately before that order was made;
 - (b) if the parental rights and duties, or any of them, vested in a local authority or voluntary organisation immediately before the order freeing the child for adoption was made, those rights and duties are vested in the individual, or as the case may be, the individuals in whom they vested immediately before they were vested in the authority or organisation ; and
 - (c) any duty extinguished by virtue of section 8(3)(b) is forth with revived, but the revocation does not affect any right or duty so far as it relates to any period before the date of the revocation.
- (4) Subject to subsection (5) if the application is dismissed on the ground that to allow it would contravene the principle embodied in section 3—
 - (a) the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and
 - (b) the adoption agency is released from the duty of complying further with section 15(3) as respects that parent.
- (5) Subsection (4) (a) shall not apply where the court which dismissed the application gives leave to the former parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

17 Care etc. of child on refusal of adoption order

- (1) Where on an application for an adoption order in relation to a child under the age of 16 the court refuses to make the adoption order then—
 - (a) if it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a specified local authority or under the supervision of a probation officer;
 - (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual, the court may by order commit the child to the care of a specified local authority.
- (2) Where the court makes an order under subsection (1)(b) the order may require the payment by either parent to the local authority, while it has the care of the child, of such weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable.
- (3) Sections 3 and 4 of the Guardianship Act 1973 (which contain supplementary provisions relating to children who are subject to supervision, or in the care of local authorities, by virtue of orders made under section 2 of that Act) apply in relation to an order under this section as they apply in relation to an order under section 2 of that Act.
- (4) In the application of this section to Scotland—

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- (a) the words " or under the supervision of a probation officer " in subsection (1) (a) do not apply;
- (b) subsection (3) does not apply ; and
- (c) subsections (2), (4) and (5) of section 11 of the Guardianship Act 1973 apply in relation to an order under this section as they apply in relation to an order under that section.

18 Need to notify local authority of adoption application

- (1) An adoption order shall not be made in respect of a child who was not placed with the applicant by an adoption agency unless the applicant has, at least three months before the date of the order, given notice to the local authority within whose area he has his home of his intention to apply for the adoption order.
- (2) On receipt of such a notice the local authority shall investigate the matter and submit to the court a report of their investigation.
- (3) Under subsection (2), the local authority shall in particular investigate—
 - (a) so far as is practicable, the suitability of the applicant, and any other matters relevant to the operation of section 3 in relation to the application ; and
 - (b) whether the child was placed with the applicant in contravention of section 29 of the 1958 Act.

19 Interim orders

- (1) Where on an application for an adoption order the requirements of sections 12(1) and 18(1) are complied with the court may postpone the determination of the application and make an order vesting the legal custody of the child in the applicants for a probationary period not exceeding two years upon such terms for the maintenance of the child and otherwise as the court thinks fit.
- (2) Where the probationary period specified in an order under subsection (1) is less than two years, the court may by a further order extend the period to a duration not exceeding two years in all.

20 Guardian ad litem and reporting officer

- (1) For the purpose of any application for an adoption order or an order under section 14, 16 or 25, rules shall provide for the appointment, in such cases as are prescribed.—
 - (a) of a person to act as guardian ad litem of the child upon the hearing of the application, with the duty of safeguarding the interests of the child in the prescribed manner;
 - (b) of a person to act as reporting officer for the purpose of witnessing agreements to adoption and performing such other duties as the rules may prescribe.
- (2) A person who is employed—
 - (a) in the case of an application for an adoption order, by the adoption agency by whom the child was placed; or
 - (b) in the case of an application under section 14 by the adoption agency by whom the application was made; or
 - (c) in the case of an application under section 16 by the adoption agency with the parental rights and duties relating to the child,

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shall not be appointed to act as guardian ad litem or reporting officer for the purposes of the application but, subject to that, the same person may if the court thinks fit be both guardian ad litem and reporting officer.

- (3) Rules may provide for the reporting officer to be appointed before the application is made.
- (4) In relation to Scotland, references in this section to a guardian ad litem shall be construed as references to a curator ad litem.

21 Hearings of applications etc. in private

- (1) Proceedings in the High Court under this Part may be disposed of in chambers.
- (2) All proceedings in the county court under this Part shall be heard and determined in camera.
- (3) Proceedings in the magistrates' court under this Part shall be domestic proceedings for the purposes of the Magistrates' Courts Act 1952 but section 57(2)(d) of that Act shall not apply in relation to any proceedings under this Part.
- (4) In relation to Scotland, all proceedings before the court under this Part shall be heard and determined in camera unless the court otherwise directs.

22 Making of order

- (1) In the case of—
 - (a) an application for an adoption order in relation to a child who is not free for adoption ;
 - (b) an application for an order under section 14,rules shall require every person who can be found and whose agreement or consent to the making of the order is required to be given or dispensed with under this Act to be notified of a date and place where he may be heard on the application and of the fact that, unless he wishes or the court requires, he need not attend.
- (2) In the case of an application under section 25 rules shall require every person who can be found, and whose agreement 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 as aforesaid.
- (3) Where an application for an adoption order relates to a child placed by an adoption agency, the agency shall submit to the court a report on the suitability of the applicants and any other matters relevant to the operation of section 3, and shall assist the court in any manner the court may direct.
- (4) The court shall not proceed to hear an application for an adoption order in relation to a child where a previous application for a British adoption order made in relation to the child by the same persons was refused by any court unless—
 - (a) in refusing the previous application the court directed that this subsection 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 proceed with the application.

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- (5) The court shall not make an adoption order in relation to a child unless it is satisfied that the applicants have not, as respects the child, contravened section 50 of the 1958 Act (prohibition of certain payments in relation to adoption).
- (6) In the application of this section to Scotland for the reference to hearing an application in subsection (4) there shall be substituted a reference to determining an application.

23 Transfer of parental rights and duties between adoption agencies

On the joint application of an adoption agency in which the parental rights and duties relating to a child who is in Great Britain are vested under section 14(6) or this section and any other adoption agency, an authorised court may if it thinks fit by order transfer the parental rights and duties to the latter agency.

24 Convention adoption orders

- (1) An adoption order shall be made as a Convention adoption order if the application is for a Convention adoption order and the following conditions are satisfied both at the time of the application and when the order is made.
- (2) The child—
 - (a) must be a United Kingdom national or a national of a Convention country, and
 - (b) must habitually reside in British territory or a Convention country, and
 - (c) must not be, or have been, married.
- (3) The applicant or applicants and the child must not all be United Kingdom nationals living in British territory.
- (4) If the application is by a married couple, either—
 - (a) each must be a United Kingdom national or a national of a Convention country, and both must habitually reside in Great Britain, or
 - (b) both must be United Kingdom nationals, and each must habitually reside in British territory or a Convention country,and if the applicants are nationals of the same Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.
- (5) If the application is by one person, either—
 - (a) he must be a United Kingdom national or a national of a Convention country, and must habitually reside in Great Britain, or
 - (b) he must be a United Kingdom national, and must habitually reside in British territory or a Convention country,and if he is a national of a Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.
- (6) If the child is not a United Kingdom national the order shall not be made—
 - (a) except in accordance with the provisions, if any, relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national, and
 - (b) unless the court is satisfied that each person who consents to the order in accordance with that internal law does so with full understanding of what is involved.

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- (7) The reference to consents and consultations in subsection (6) does not include a reference to consent by and consultation with the applicant and members of the applicant's family (including his or her spouse), and for the purposes of subsection (6) consents may be proved in the manner prescribed by rules and the court shall be treated as the authority by whom, under the law mentioned in subsection (6), consents may be dispensed with and the adoption in question may be effected; and where the provisions there mentioned require the attendance before that authority of any person who does not reside in Great Britain, that requirement shall be treated as satisfied for the purposes of subsection (6) if—
- (a) that person has been given a reasonable opportunity of communicating his opinion on the adoption in question to the proper officer or clerk of the court, or to an appropriate authority of the country in question, for transmission to the court; and
 - (b) where he has availed himself of that opportunity, his opinion has been transmitted to the court.
- (8) In subsections (4) and (5) " specified provision " means a provision specified in an order of the Secretary of State as one notified to the Government of the United Kingdom in pursuance of the provisions of the Convention which relate to prohibitions on an adoption contained in the national law of the Convention country in question.
- (9) Sections 9 and 10(1) (ascertainment of nationality, and internal law of foreign country) of the Adoption Act 1968 shall apply with any necessary modifications for the purposes of this section as they apply for the purposes of that Act.

25 Adoption of children abroad

- (1) Where on an application made in relation to a child by a person who is not domiciled in England and Wales or Scotland an authorised court is satisfied that he intends to adopt the child under the law of or within the country in which the applicant is domiciled, the court may, subject to the following provisions of this section, make an order vesting in him the parental rights and duties relating to the child.
- (2) The provisions of this Part relating to adoption orders, except sections 8(1), (9) and (10), 10(2), 11(2), 14 to 16, 19, 22(1), 23 and 24, shall apply in relation to orders under this section as they apply in relation to adoption orders subject to the modification that in section 9(1) for " 19 " and " 13 " there are substituted " 32 " and " 26 " respectively.
- (3) Sections 20 to 23 and 24(4) and (5) of the 1958 Act shall apply in relation to an order under this section as they apply in relation to an adoption order except that any entry in the Registers of Births, the Register of Births or the Adopted Children Register which is required to be marked in consequence of the making of an order under this section shall, in lieu of being marked with the word " Adopted " or " Re-adopted " (with or without the addition of the word " (Scotland) " or " (England) ") be marked with the words " Proposed Foreign Adoption " or " Proposed Foreign Re-adoption ", as the case may require.
- (4) References in Parts III and IV of the 1958 Act to an adoption order include references to an order under this section, and references in this Act and in the 1958 Act to the placing of children for adoption or to the making of arrangements for adoption include references to the placing of children for adoption abroad or the making of arrangements for adoption abroad.