



# Adoption Act 1976

## 1976 CHAPTER 36

### PART VI

#### MISCELLANEOUS AND SUPPLEMENTAL

#### **55 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 Part II relating to adoption orders, except sections 12(1), 14(2), 15(2), 17 to 21 and 25, shall apply in relation to orders under this section as they apply in relation to adoption orders subject to the modification that in section 13(1) for " 19 " and " 13 " there are substituted " 32 " and " 26 " respectively.
- (3) Sections 50 and 51 and paragraphs 1 and 2(1) of Schedule 1 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, 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)"), be marked with the words " Proposed foreign adoption " or " Proposed foreign re-adoption ", as the case may require.
- (4) References in sections 27, 28, 30, 31 and 32 to an adoption order include references to an order under this section or under section 25 of the Children Act 1975 (orders in Scotland authorising adoption abroad).

#### **56 Restriction on removal of children for adoption outside Great Britain**

- (1) Except under the authority of an order under section 55, or under section 25 of the Children Act 1975 (orders in Scotland authorising adoption abroad) it shall not be lawful for any person to take or send a child who is a British subject or a citizen

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of the Republic of Ireland out of Great Britain to any place outside the British Islands with a view to the adoption of the child by any person not being a parent or guardian or relative of the child; and any person who takes or sends a child out of Great Britain to any place in contravention of this subsection, or makes or takes part in any arrangements for transferring the actual custody of a child to any person for that purpose, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both.

- (2) In any proceedings under this section, a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer shall, upon proof that the officer or the deponent cannot be found in the United Kingdom, be admissible as evidence of the matters stated therein, and it shall not be necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.
- (3) A person shall be deemed to take part in arrangements for transferring the actual custody of a child to a person for the purpose referred to in subsection (1) if—
  - (a) he facilitates the placing of the child in the actual custody of that person ; or
  - (b) he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, and if he causes another person to do so.

## **57 Prohibition on certain payments**

- (1) Subject to the provisions of this section, it shall not be lawful to make or give to any person any payment or reward for or in consideration of—
  - (a) the adoption by that person of a child ;
  - (b) the grant by that person of any agreement or consent required in connection with the adoption of a child;
  - (c) the transfer by that person of the actual custody of a child with a view to the adoption of the child; or
  - (d) the making by that person of any arrangements for the adoption of a child.
- (2) Any person who makes or gives, or agrees or offers to make or give, any payment or reward prohibited by this section, or who receives or agrees to receive or attempts to obtain any such payment or reward, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both; and the court may order any child in respect of whom the offence was committed to be removed to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him.
- (3) This section does not apply to any payment made to an adoption agency by a parent or guardian of a child or by a person who adopts or proposes to adopt a child, being a payment in respect of expenses reasonably incurred by the agency in connection with the adoption of the child, or to any payment or reward authorised by the court to which an application for an adoption order in respect of a child is made.
- (4) If an adoption agency submits to the Secretary of State a scheme for the payment by the agency of allowances to persons who have adopted or intend to adopt a child where arrangements for the adoption were made, or are to be made, by that agency, and the Secretary of State approves the scheme, this section shall not apply to any payment made in accordance with the scheme.

- (5) The Secretary of State, in the case of a scheme approved by him under subsection (4), may at any time—
  - (a) make, or approve the making by the agency of, alterations to the scheme;
  - (b) revoke the scheme.
- (6) The Secretary of State shall, within seven years of the date on which section 32 of the Children Act 1975 came into force and, thereafter, every five years, publish a report on the operation of the schemes since that date or since the publication of the last report.
- (7) Subject to the following subsection, subsection (4) of this section shall expire on the seventh anniversary of the date on which section 32 of the Children Act 1975 came into force.
- (8) The Secretary of State may by order made by statutory instrument at any time before the said anniversary repeal subsection (7) of this section.
- (9) An order under subsection (8) of this section shall not be made unless a report has been published under subsection (6) of this section.
- (10) Notwithstanding the expiry of subsection (4) of this section or the revocation of a scheme approved under this section, subsection (1) of this section shall not apply in relation to any payment made, whether before or after the expiry of subsection (4) or the revocation of the scheme, in accordance with a scheme which was approved under this section to a person to whom such payments were made—
  - (a) where the scheme was not revoked, before the expiry of subsection (4), or
  - (b) if the scheme was revoked, before the date of its revocation.

## **58 Restriction on advertisements**

- (1) It shall not be lawful for any advertisement to be published indicating—
  - (a) that the parent or guardian of a child desires to cause a child to be adopted ; or
  - (b) that a person desires to adopt a child ; or
  - (c) that any person (not being an adoption agency) is willing to make arrangements for the adoption of a child.
- (2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

## **59 Effect of determination and orders made in Scotland and overseas in adoption proceedings**

- (1) Where an authority of a Convention country or any British territory other than Great Britain having power under the law of that country or territory—
  - (a) to authorise or review the authorisation of a regulated adoption or a specified order; or
  - (b) to give or review a decision revoking or annulling a regulated adoption, a specified order or a Convention adoption order,makes a determination in the exercise of that power, then, subject to sections 52(3) and 53 and any subsequent determination having effect under this subsection, the determination shall have effect in England and Wales for the purpose of effecting,

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confirming or terminating the adoption in question or confirming its termination, as the case may be.

- (2) Subsections (2) and (3) of section 12 shall apply in relation to an order under section 14 of the Children Act 1975 (freeing children for adoption in Scotland) as if the order were an adoption order; and, on the revocation of the order under section 16 of that Act, any duty extinguished by section 12(3)(b) is forthwith revived but the revival does not have the effect as respects anything done or not done before the revival.
- (3) Sections 12(3) and (4) and 49 apply in relation to a child who is the subject of an order which is similar to an order under section 55 and is made (whether before or after this Act has effect) in Scotland, Northern Ireland, the Isle of Man or any of the Channel Islands, as they apply in relation to a child who is the subject of an adoption order.

## **60 Evidence of adoption in Scotland and Northern Ireland**

Any document which is receivable as evidence of any matter—

- (a) in Scotland under section 22(2) of the Adoption Act 1958; or
- (b) in Northern Ireland under section 23(4) of the Adoption Act (Northern Ireland) 1967 or any corresponding provision contained in a Measure of the Northern Ireland Assembly for the time being in force,

shall also be so receivable in England and Wales.

## **61 Evidence of agreement and consent**

- (1) Any agreement or consent which is required by this Act to be given to the making of an order or application for an order (other than an order to which section 17(6) applies) may be given in writing, and, if the document signifying the agreement or consent is witnessed in accordance with rules, it shall be admissible in evidence without further proof of the signature of the person by whom it was executed.
- (2) A document signifying such agreement or consent which purports to be witnessed in accordance with rules shall be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

## **62 Courts**

- (1) In this Act, "authorised court", as respects an application for an order relating to a child, shall be construed as follows.
- (2) Subject to subsections (4) to (6), if the child is in England or Wales when the application is made, the following are authorised courts—
  - (a) the High Court;
  - (b) the county court within whose district the child is, and, in the case of an application for an order freeing a child for adoption, any county court within whose district a parent or guardian of the child is;
  - (c) any other county court prescribed by rules made under section 102 of the County Courts Act 1959 ;
  - (d) a magistrates' court within whose area the child is, and, in the case of an application for an order freeing the child for adoption, a magistrates' court within whose area a parent or guardian of the child is.

- (3) If, in the case of an application for an adoption order or for an order freeing a child for adoption, the child is not in Great Britain when the application is made, the High Court is the authorised court.
- (4) In the case of an application for a Convention adoption order, paragraphs (b), (c) and (d) of subsection (2) do not apply.
- (5) Subsection (2) does not apply in the case of an application under section 29 but for the purposes of such an application the following are authorised courts—
  - (a) if there is pending in respect of the child an application for an adoption order or an order freeing him for adoption, the court in which that application is pending;
  - (b) if paragraph (a) does not apply and there is no application for an order under section 8 or 14 of the Children Act 1975 (which make provision in Scotland for adoption orders and orders freeing children for adoption pending in respect of the child), the High Court, the county court within whose district the applicant lives and the magistrates' court within whose area the applicant lives.
- (6) In the case of an order under section 55, paragraph (d) of subsection (2) does not apply.

### **63 Appeals etc.**

- (1) Subject to subsection (4), where any application has been made under this Act to a county court, the High Court may, at the instance of any party to the application, order the application to be removed to the High Court and there proceeded with on such terms as to costs as it thinks proper.
- (2) Subject to subsections (3) and (4), where on an application to a magistrates' court under this Act the court makes or refuses to make an order, an appeal shall lie to the High Court.
- (3) Subject to subsection (4), where an application is made to a magistrates' court under this Act, and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates' court shall refuse to make an order, and in that case no appeal shall lie to the High Court.
- (4) This section does not apply in relation to an application for leave of the court to remove a child from a person's custody under section 27 or 28 or to serve a notice under section 30(1) or in relation to an appeal against an order made under section 34.

### **64 Hearing of applications in private**

Proceedings under Part II, section 29 or section 55—

- (a) in the High Court, may be disposed of in chambers;
- (b) in a county court, shall be heard and determined in camera;
- (c) in a magistrates' court, 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 thereto.

## **65 Guardians ad litem and reporting officers**

- (1) For the purpose of any application for an adoption order or an order freeing a child for adoption or an order under section 20 or 55 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 for an order freeing a child for adoption, by the adoption agency by whom the application was made ; or
  - (c) in the case of an application under section 20, by the adoption agency with the parental rights and duties relating to the child,
- 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.

## **66 Rules of procedure**

- (1) Rules in regard to any matter to be prescribed under this Act and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect shall be made by the Lord Chancellor.
- (2) Subsection (1) does not apply in relation to proceedings before magistrates' courts, but the power to make rules conferred by section 15 of the Justices of the Peace Act 1949, shall include power to make provision as to any of the matters mentioned in that subsection.
- (3) 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 freeing a child for adoption,
- rules shall require every person who can be found and whose agreement or consent to the making of the order is required under this Act to be notified of a date and place where he will be heard on the application and of the fact that, unless he wishes or the court requires, he need not attend.
- (4) In the case of an application under section 55, rules shall require every parent and guardian of the child who can be found to be notified as aforesaid.
- (5) Rules made as respects magistrates' courts may provide for enabling any fact tending to establish the identity of a child with a child to whom a document relates to be proved by affidavit and for excluding or restricting in relation to any facts that may be so proved the power of a justice of the peace to compel the attendance of witnesses.
- (6) This section does not apply in relation to sections 9, 10, 11 and 32 to 37.

## **67 Orders, rules and regulations**

- (1) Any power to make orders, rules or regulations conferred by this Act on the Secretary of State, the Lord Chancellor or the Registrar General shall be exercisable by statutory instrument.
- (2) A statutory instrument containing rules or regulations made under any provision of this Act, except section 3(1), shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An order under section 28(10) or 57(8) shall not be made unless a draft of the order has been approved by resolution of each House of Parliament.
- (4) An order made under any provision of this Act, except section 74, may be revoked or varied by a subsequent order under that provision.
- (5) Orders and regulations made under this Act may make different provision in relation to different cases or classes of cases and may exclude certain cases or classes of cases.
- (6) The Registrar General shall not make regulations under section 51 or paragraph 1(1) of Schedule 1 except with the approval of the Secretary of State.

## **68 Offences by bodies corporate**

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, any director, manager, member of the committee, secretary or other officer of the body, he as well as the body shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## **69 Service of notices etc.**

Any notice or information required to be given under this Act may be given by post.

## **70 Nationality**

- (1) If the Secretary of State by order declares that a description of persons specified in the order has, in pursuance of the Convention, been notified to the Government of the United Kingdom as the description of persons who are deemed to possess the nationality of a particular Convention country, persons of that description shall, subject to the following provisions of this section, be treated for the purposes of this Act as nationals of that country.
- (2) Subject to section 54(3) and subsection (3) of this section, where it appears to the court in any proceedings under this Act, or to any court by which a decision in pursuance of section 53(3) falls to be given, that a person is or was at a particular time a national of two or more countries, then—
  - (a) if it appears to the said court that he is or was then a United Kingdom national, he shall be treated for the purposes of those proceedings or that decision as if he were or had then been a United Kingdom national only;
  - (b) if, in a case not falling within paragraph (a), it appears to the said court that one only of those countries is or was then a Convention country, he shall be treated for those purposes as if he were or had then been a national of that country only ;

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- (c) if, in a case not falling within paragraph (a), it appears to the said court that two or more of those countries are or were then Convention countries, he shall be treated for those purposes as if he were or had then been a national of such one only of those Convention countries as the said court considers is the country with which he is or was then most closely connected;
  - (d) in any other case, he shall be treated for those purposes as if he were or had then been a national of such one only of those countries as the said court considers is the country with which he is or was then most closely connected.
- (3) A court in which proceedings are brought in pursuance of section 17, 52(3) or 53 shall be entitled to disregard the provisions of subsection (2) in so far as it appears to that court appropriate to do so for the purposes of those proceedings; but nothing in this subsection shall be construed as prejudicing the provisions of section 54(3).
- (4) Where, after such inquiries as the court in question considers appropriate, it appears to the court in any proceedings under this Act, or to any court by which such a decision as aforesaid falls to be given, that a person has no nationality or no ascertainable nationality, he shall be treated for the purposes of those proceedings or that decision as a national of the country in which he resides or, where that country is one of two or more countries having the same law of nationality, as a national of those countries.

## **71 Internal law of a country**

- (1) In this Act " internal law " in relation to any country means the law applicable in a case where no question arises as to the law in force in any other country.
- (2) In any case where the internal law of a country falls to be ascertained for the purposes of this Act by any court and there are in force in that country two or more systems of internal law, the relevant system shall be ascertained in accordance with any rule in force throughout that country indicating which of the systems is relevant in the case in question or, if there is no such rule, shall be the system appearing to that court to be most closely connected with the case.

## **72 Interpretation**

- (1) In this Act, unless the context otherwise requires—
- " adoption agency " in sections 11, 13, 18 to 23 and 27 to 31 includes an adoption agency within the meaning of section 1 of the Children Act 1975 (adoption agencies in Scotland);
  - " adoption order " means an order under section 12(1) and, in sections 12(3) and (4), 18 to 21 and 30 to 32 includes an order under section 8 of the Children Act 1975 (adoption orders in Scotland);
  - " adoption society " means a body of persons whose functions consist of or include the making of arrangements for the adoption of children ;
  - " approved adoption society " means an adoption society approved under Part I;
  - " authorised court " shall be construed in accordance with section 62;
  - " body of persons " means any body of persons, whether incorporated or unincorporated;
  - " British adoption order " means an adoption order, an order under section 8 of the Children Act 1975 (adoption orders in Scotland), or any provision for

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the adoption of a child effected under the law of Northern Ireland or any British territory outside the United Kingdom;

" British territory " means, for the purposes of any provision of this Act, any of the following countries, that is to say, Great Britain, Northern Ireland, the Channel Islands, the Isle of Man and a colony, being a country designated for the purposes of that provision by order of the Secretary of State or, if no country is so designated, any of those countries ;

" child ", except where used to express a relationship, means a person who has not attained the age of 18 years ;

" the Convention " means the Convention relating to the adoption of children concluded at the Hague on 15th November 1965 and signed on behalf of the United Kingdom on that date ;

" Convention adoption order " means an adoption order made in accordance with section 17(1);

" Convention country " means any country outside British territory, being a country for the time being designated by an order of the Secretary of State as a country in which, in his opinion, the Convention is in force ;

" existing ", in relation to an enactment or other instrument, means one passed or made at any time before 1st January 1976;

" guardian " means—

- (a) a person appointed by deed or will in accordance with the provisions of the Guardianship of Infants Acts 1886 and 1925 or the Guardianship of Minors Act 1971 or by a court of competent jurisdiction to be the guardian of the child, and
- (b) in the case of an illegitimate child, includes the father where he has custody of the child by virtue of an order under section 9 of the Guardianship of Minors Act 1971, or under section 2 of the Illegitimate Children (Scotland) Act 1930 ;

" internal law " has the meaning assigned by section 71;

" local authority " means the council of a county (other than a metropolitan county), a metropolitan district, a London borough or the Common Council of the City of London and, in sections 13, 22, 28 to 31, 35(1) and 51, includes a regional or islands council;

" notice " means a notice in writing ;

" order freeing a child for adoption " means an order under section 18 ;

" overseas adoption " has the meaning assigned by subsection (2);

" place of safety " means a community home provided by a local authority, a controlled community home, police station, or any hospital, surgery or other suitable place the occupier of which is willing temporarily to receive a child;

" prescribed " means prescribed by rules ;

" regulated adoption " means an overseas adoption of a description designated by an order under subsection (2) as that of an adoption regulated by the Convention;

" relative " in relation to a child means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by affinity and includes, where the child is illegitimate, the father of the child and any person who would be a relative within the meaning of this definition if the child were the legitimate child of his mother and father;

" rules " means rules made under section 66(1) or made by virtue of section 66(2) under section 15 of the Justices of the Peace Act 1949 ;

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" specified order " means any provision for the adoption of a child effected under enactments similar to section 12(1) and 17 in force in Northern Ireland or any British territory outside the United Kingdom ;

" United Kingdom national " means, for the purposes of any provision of this Act, a citizen of the United Kingdom and colonies satisfying such conditions, if any, as the Secretary of State may by order specify for the purposes of that provision ;

" 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 " overseas adoption " means an adoption of such a description as the Secretary of State may by order specify, being a description of adoptions of children appearing to him to be effected under the law of any country outside Great Britain; and an order under this subsection may contain provision as to the manner in which evidence of an overseas adoption may be given.
- (3) For the purposes of this Act, a person shall be deemed to make arrangements for the adoption of a child if he 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 is intended to be effected, in Great Britain or elsewhere, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, and if he causes another person to do so.
- (4) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.
- (5) In this Act, except where otherwise indicated—
  - (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
  - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
  - (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

### **73 Transitional provisions, amendments and repeals,**

- (1) The transitional provisions contained in Schedule 2 shall have effect.
- (2) The enactments specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Act.
- (3) The enactments specified in Schedule 4 are hereby repealed to the extent specified in column 3 of that Schedule.

### **74 Short title, commencement and extent**

- (1) This Act may be cited as the Adoption Act 1976.
- (2) This Act shall come into force on such date as the Secretary of State may by order appoint and different dates may be appointed for different provisions.

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- (3) This Act, except sections 22, 23, 51 and 73(2), this section and Part II of Schedule 3, shall not extend to Scotland and the said Part II shall not extend to England and Wales.
- (4) This Act, except section 40 and Schedule 4 so far as it repeals section 19 of the Adoption Act 1958, section 1(3) of the Adoption Act 1964 and sections 9(5) and 14 of the Adoption Act 1968, shall not extend to Northern Ireland.