



Adoption (Scotland) Act 1978

1978 CHAPTER 28

PART IV

STATUS OF ADOPTED CHILDREN

39 Status conferred by adoption.

[^{F1}(1) A child who is the subject of an adoption order shall be treated in law—

- (a) where the adopters are a married couple, as if—
 - (i) he had been born as a ^{F2}... child of the marriage (whether or not he was in fact born after the marriage was constituted); and
 - (ii) [^{F3}subject to subsection (2A)] he were not the child of any person other than the adopters;
- (b) where the adoption order is made by virtue of section 15(1)(aa) as if—
 - (i) he had been born as a ^{F2}... child of the marriage between the adopter and the natural parent to whom the adopter is married (whether or not he was in fact born after the marriage was constituted); and
 - (ii) [^{F3}subject to subsection (2A)] he were not the child of any person other than the adopter and that natural parent; and
- (c) in any other case, as if—
 - (i) he had been born as a ^{F2}... child of the adopter; and
 - (ii) [^{F3}subject to subsection (2A)] he were not the child of any person other than the adopter.]

(2) Where [^{F4}a] child has been adopted by one of his natural parents as sole adoptive parent and the adopter thereafter marries the other natural parent, subsection (1) shall not affect any enactment or rule of law whereby, by virtue of the marriage, the child is rendered the ^{F5}... child of both natural parents.

[^{F6}(2A) Where, in the case of a child adopted under a Convention adoption, the Court of Session is satisfied, on an application under this subsection—

- (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption;

Changes to legislation: Adoption (Scotland) Act 1978, Section 39 is up to date with all changes known to be in force on or before 12 October 2023. 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

- (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption, or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention); and
- (c) that it would be more favourable to the child for a direction to be given under this subsection,

the Court may direct that sub-paragraph (ii) of, as the case may be, paragraph (a), (b) or (c) of subsection (1) shall not apply, or shall not apply to such extent as may be specified in the direction: and in this subsection “full adoption” means an adoption by virtue of which the child falls to be treated in law as if he were not the child of any person other than the adopters or adopter.]

- (3) This section has effect—
 - (a) in the case of an adoption before 1st January 1976, from that date, and
 - (b) in the case of any other adoption, from the date of the adoption.
- (4) Subject to the provisions of this Part, this section—
 - (a) applies for the construction of enactments or instruments passed or made before or after the commencement of this Act so far as the context admits; and
 - (b) does not affect things done or events occurring before the adoption or, where the adoption took place before 1st January 1976, before that date.
- (5) This section has effect subject to the provisions of section 44.

Textual Amendments

- F1** S. 39(1) substituted (1.4.1997) by 1995 c. 36, s. 97(3) (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F2** Word in s. 39(1) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), sch. 3; S.S.I. 2006/212, art. 2
- F3** Words in s. 39(1) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 5(2), 18(3) (with s. 17); S.S.I. 2003/121, art. 2(c)
- F4** Word in s. 39(2) substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(1), 11(4), Sch. 1 para. 18(2)
- F5** Word in s. 39(2) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), sch. 3; S.S.I. 2006/212, art. 2
- F6** S. 39(2A) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), ss. 5(3), 18(3) (with s. 17); S.S.I. 2003/121, art. 2(c)

Modifications etc. (not altering text)

- C1** S. 39 modified (21.12.2018) by The Human Fertilisation and Embryology (Parental Orders) Regulations 2018 (S.I. 2018/1412), reg. 1(2), Sch. 4 para. 7

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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. 50(4)(5) inserted by [2002 c. 38 s. 133\(1\)\(b\)](#)
- s. 56A restricted by [1999 c. 18 s. 16\(1\)](#)
- s. 65(2)-(2D) substituted for s. 65(2) by [2002 c. 38 s. 134](#)