



Adoption and Children Act 2002

2002 CHAPTER 38

PART 3

MISCELLANEOUS AND FINAL PROVISIONS

CHAPTER 1

MISCELLANEOUS

Other miscellaneous provisions

132 Amendment of Adoption (Scotland) Act 1978: contravention of sections 30 to 36 of this Act

After section 29 of the Adoption (Scotland) Act 1978 (c. 28) there is inserted—

“29A Contravention of sections 30 to 36 of Adoption and Children Act 2002

- (1) A person who contravenes any of the enactments specified in subsection (2) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (2) Those enactments are—
 - (a) section 30(1), (2) and (3) (removal of child placed or who may be placed for adoption),
 - (b) sections 32(2)(b), 33(2) and 35(2) (return of child by prospective adopters),
 - (c) section 34(1) (removal of child in contravention of placement order),
 - (d) section 36(1) (removal of child in non-agency case), and
 - (e) section 36(5) (return of child to parent or guardian),

Status: This is the original version (as it was originally enacted).

of the Adoption and Children Act 2002.”

133 Scottish restriction on bringing children into or out of United Kingdom

- (1) In section 50 of the Adoption (Scotland) Act 1978 (restriction on removal of children for adoption outside Great Britain)—
- (a) in subsection (1), “not being a parent or guardian or relative of the child” is omitted,
 - (b) after subsection (3) there is inserted—
 - “(4) The Scottish Ministers may by regulations provide for subsection (1) to apply with modifications, or not to apply, if—
 - (a) the prospective adopters are parents, relatives or 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.
 - (5) On the occasion of the first exercise of the power to make regulations under subsection (4)—
 - (a) the regulations shall not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and
 - (b) accordingly section 60(2) does not apply to the statutory instrument containing the regulations.”
- (2) For section 50A of that Act (restriction on bringing children into the United Kingdom for adoption) there is substituted—

“50A 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 outside 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 six months ending with that time.
- (2) In subsection (1) above the references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to 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 outside the British Islands, whether or not the adoption is—
- (a) an adoption within the meaning of Part IV; or
 - (b) a full adoption (as defined in section 39(2A)).

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

- (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 his 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 Part II of this Act to apply with modifications or not to apply.
 - (8) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, he is guilty of an offence if—
 - (a) he has not complied with any requirement imposed by virtue of subsection (5); or
 - (b) any condition required to be met by virtue of subsection (6) is not met, before that time, or before any later time which may be prescribed.
 - (9) A person guilty of an offence under this section is liable—
 - (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.
 - (10) Regulations may provide for this section not to apply if—
 - (a) the adopters or (as the case may be) prospective adopters are natural parents (whether or not they have parental responsibilities or parental rights in relation to the child), natural relatives or guardians of the child in question (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.
 - (11) On the occasion of the first exercise of the power to make regulations under subsection (10)—
 - (a) the regulations shall not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and
 - (b) accordingly section 60(2) does not apply to the statutory instrument containing the regulations.
 - (12) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Scottish Ministers.”
- (3) In section 65 of that Act (interpretation), in subsection (1), in the definition of “adoption agency”, for “and 27” there is substituted “, 27 and 50A”.

134 Amendment of Adoption (Scotland) Act 1978: overseas adoptions

In section 65 of the Adoption (Scotland) Act 1978 (c. 28) (interpretation), for subsection (2) there is substituted—

“(2) In this Act, “overseas adoption” —

- (a) means an adoption of a description specified in an order made by the Scottish Ministers, being a description of adoptions effected under the law of any country or territory outside the British Islands, but
- (b) does not include a Convention adoption.

(2A) The Scottish Ministers may by regulations prescribe the requirements that ought to be met by an adoption of any description effected after the commencement of the regulations for it to be an overseas adoption for the purposes of this Act.

(2B) At any time when such regulations have effect, the Scottish Ministers must exercise their power under subsection (2) so as to secure that subsequently effected adoptions of any description 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 prescribed requirements.

(2C) An order under subsection (2) may contain provision as to the manner in which evidence of any overseas adoption may be given.

(2D) In subsections (2) to (2C), “adoption” means the adoption of a child or of a person who was a child at the time the adoption was applied for.”

135 Adoption and fostering: criminal records

(1) Part 5 of the Police Act 1997 (c. 50) (certificates of criminal records) is amended as follows.

(2) In section 113 (criminal record certificates), in subsection (3A), for “his suitability” there is substituted “the suitability of the applicant, or of a person living in the same household as the applicant, to be a foster parent or”.

(3) In section 115 (enhanced criminal record certificates), in subsection (6A), for “his suitability” there is substituted “the suitability of the applicant, or of a person living in the same household as the applicant, to be a foster parent or”.

136 Payment of grants in connection with welfare services

(1) Section 93 of the Local Government Act 2000 (c. 22) (payment of grants for welfare services) is amended as follows.

(2) In subsection (1) (payment of grants by the Secretary of State), for the words from “in providing” to the end there is substituted—

- “(a) in providing, or contributing to the provision of, such welfare services as may be determined by the Secretary of State, or
- (b) in connection with any such welfare services.”

(3) In subsection (2) (payment of grants by the Assembly), for the words from “in providing” to the end there is substituted—

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

- “(a) in providing, or contributing to the provision of, such welfare services as may be determined by the Assembly, or
- (b) in connection with any such welfare services.”

(4) After subsection (6) there is inserted—

“(6A) Before making any determination under subsection (3) or (5) the Secretary of State must obtain the consent of the Treasury.”

137 Extension of the Hague Convention to British overseas territories

(1) Her Majesty may by Order in Council provide for giving effect to the Convention in any British overseas territory.

(2) An Order in Council under subsection (1) in respect of any British overseas territory may, in particular, make any provision corresponding to provision which in relation to any part of Great Britain is made by the Adoption (Intercountry Aspects) Act 1999 (c. 18) or may be made by regulations under section 1 of that Act.

(3) The British Nationality Act 1981 (c. 61) is amended as follows.

(4) In section 1 (acquisition of British citizenship by birth or adoption)—

- (a) in subsection (5), at the end of paragraph (b) there is inserted “effected under the law of a country or territory outside the United Kingdom”,
- (b) at the end of subsection (5A)(b) there is inserted “or in a designated territory”,
- (c) in subsection (8), the words following “section 50” are omitted.

(5) In section 15 (acquisition of British overseas territories citizenship)—

(a) after subsection (5) there is inserted—

“(5A) Where—

- (a) a minor who is not a British overseas territories citizen is adopted under a Convention adoption,
- (b) on the date on which the adoption is effected—
 - (i) the adopter or, in the case of a joint adoption, one of the adopters is a British overseas territories citizen, and
 - (ii) the adopter or, in the case of a joint adoption, both of the adopters are habitually resident in a designated territory, and
- (c) the Convention adoption is effected under the law of a country or territory outside the designated territory,

the minor shall be a British overseas territories citizen as from that date.”,

(b) in subsection (6), after “order” there is inserted “or a Convention adoption”.

(6) In section 50 (interpretation), in subsection (1)—

(a) after the definition of “company” there is inserted—

““Convention adoption” means an adoption effected under the law of a country or territory in which the Convention is in force, and certified in pursuance of Article 23(1) of the Convention”,

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- (b) after the definition of “Crown service under the government of the United Kingdom” there is inserted—

““designated territory” means a qualifying territory, or the Sovereign Base Areas of Akrotiri and Dhekelia, which is designated by Her Majesty by Order in Council under subsection (14)”.

- (7) After subsection (13) of that section there is inserted—

“(14) For the purposes of the definition of “designated territory” in subsection (1), an Order in Council may—

- (a) designate any qualifying territory, or the Sovereign Base Areas of Akrotiri and Dhekelia, if the Convention is in force there, and
- (b) make different designations for the purposes of section 1 and section 15;

and, for the purposes of this subsection and the definition of “Convention adoption” in subsection (1), “the Convention” means the Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993.

An Order in Council under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

138 Proceedings in Great Britain

Proceedings for an offence by virtue of section 9, 59, 93, 94, 95 or 129—

- (a) may not be brought more than six years after the commission of the offence but, subject to that,
- (b) may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

In relation to Scotland, “the prosecutor” is to be read as “the procurator fiscal”.