



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### PART IV

#### STATUS OF ADOPTED CHILDREN

##### Modifications etc. (not altering text)

- C1** Part IV (meaning of "adopted ") applied (5.4.1993) by [Child Support Act 1991 \(SIF 20, c. 48\)](#), s. **26(3)** (with s. 9(2)); S.I. 1992/2644, art.2
- C2** Pt. IV applied (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. **39(3)**, 121(2); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

#### 38 Meaning of "adoption order": in Part IV.

- (1) In this Part "adoption order" means—
- (a) an adoption order within the meaning of section 65(1);
  - (b) an adoption order under the <sup>M1</sup>Children Act 1975, the <sup>M2</sup>Adoption Act 1958, the <sup>M3</sup>Adoption Act 1950 or any enactment repealed by the Adoption Act 1950;
  - (c) an order effecting an adoption made in England, Wales, Northern Ireland, the Isle of Man or any of the Channel Islands;
  - [<sup>F1</sup>(cc) a Convention adoption;]
  - (d) an "overseas adoption": within the meaning of section 65(2); or
  - (e) any other adoption recognised by the law of Scotland;
- and cognate expressions shall be construed accordingly.
- (2) The definition of adoption order includes, where the context admits, an adoption order which took effect before the commencement of the <sup>M4</sup>Children Act 1975.

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#### Textual Amendments

**F1** S. 38(1)(cc) inserted (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\)](#), **ss. 5(1), 18(3)** (with s. 17); [S.S.I. 2003/121](#), art. 2(c)

#### Marginal Citations

**M1** 1975 c. 72.

**M2** 1958 c. 5 (7 & 8 Eliz. 2).

**M3** 1950 c. 26.

**M4** 1975 c. 72.

### 39 Status conferred by adoption.

- [<sup>F2</sup>(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 <sup>F3</sup>... child of the marriage (whether or not he was in fact born after the marriage was constituted); and
    - (ii) [<sup>F4</sup>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 <sup>F3</sup>... 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) [<sup>F4</sup>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 <sup>F3</sup>... child of the adopter; and
    - (ii) [<sup>F4</sup>subject to subsection (2A)] he were not the child of any person other than the adopter.]
- (2) Where [<sup>F5</sup>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 <sup>F6</sup>... child of both natural parents.

- [<sup>F7</sup>(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;
  - (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.]

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- (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

- F2** 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)
- F3** 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
- F4** 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)
- F5** 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)
- F6** 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
- F7** 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)

- C3** 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

40 ..... **F8**

#### Textual Amendments

- F8** S. 40 repealed by British Nationality Act 1981 (c. 61, SIF 87), Sch. 9

### 41 Miscellaneous enactments.

- (1) Section 39 does not apply in determining the forbidden degrees of consanguinity and affinity in respect of the law relating to marriage [<sup>F9</sup>, to the eligibility of persons to register as civil partners of each other] or in respect of the crime of incest, except that, on the making of an adoption order, the adopter and the child shall be deemed, for all time coming, to be within the said forbidden degrees in respect of the law relating to marriage [<sup>F10</sup>, to such eligibility and to incest].
- (2) <sup>F11</sup> . . . section 39 does not apply for the purposes of any provision of—
- (a) [<sup>F12</sup>the British Nationality Act 1981],
  - (b) the <sup>M5</sup>Immigration Act 1971,

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- (c) any instrument having effect under an enactment within paragraph (a) or (b),  
or
  - (d) any other law for the time being in force which determines [<sup>F13</sup>British citizenship, British Dependent Territories citizenship [<sup>F14</sup>, the status of a British National (Overseas)] or British Overseas citizenship.]
- (3) <sup>F15</sup> .....

#### Textual Amendments

- F9** Words in s. 41(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 86(10)(a)**, 263(3); [S.S.I. 2005/604](#), art. 2(b)
- F10** Words in s. 41(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 86(10)(b)**, 263(3); [S.S.I. 2005/604](#), art. 2(b)
- F11** Words repealed by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(8), **Sch. 9**
- F12** Words substituted by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(6), **Sch. 7**
- F13** Words substituted by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(6), **Sch. 7**
- F14** Words inserted by [S.I. 1986/948](#), art. 8, **Sch.**
- F15** S. 41(3)–(5) repealed by [Social Security Act 1988 \(c. 7, SIF 113:1\)](#), ss. 16, 19(3), **Sch. 5**

#### Modifications etc. (not altering text)

- C4** S. 41(1) modified (21.12.2018) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2018 \(S.I. 2018/1412\)](#), reg. 1(2), **Sch. 4 para. 8**

#### Marginal Citations

- M5** 1971 c. 77

## 42 Pensions.

Section 39(1) does not affect entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of his adoption.

## 43 Insurance.

Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy shall by virtue of the adoption be transferred to the adoptive parents who shall for the purposes of the enactments relating to such societies and companies be treated as the person who took out the policy.

## 44 Effect of s. 39 on succession and inter vivos deed.

Section 39 (status conferred by adoption) does not affect the existing law relating to adopted persons in respect of—

- (a) the succession to a deceased person (whether testate or intestate), and
- (b) the disposal of property by virtue of any inter vivos deed.

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**Modifications etc. (not altering text)**

- C5** S. 44 modified (21.12.2018) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2018 \(S.I. 2018/1412\)](#), reg. 1(2), **Sch. 4 para. 9**

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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](#)